

22-335

United States Court of Appeals for the Second Circuit

IN RE: RENEWABLE ENERGY GROUP SECURITIES LITIGATION

Steven Rosa,
Plaintiff-Appellant,

David Ramsey, individually and on behalf of all others similarly situated, Chris
Olson, individually and on behalf of all others similarly situated,
Plaintiffs,

v.

Renewable Energy Group, Inc., Randolph L. Howard, Cynthia J. Warner,
Chad Stone, Todd Robinson,
Defendants-Appellees.

**On Appeal from the United States District Court
for the Southern District of New York, No. 21-CV-1832**

BRIEF OF APPELLANT AND SPECIAL APPENDIX

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JURISDICTIONAL STATEMENT

This is an appeal of a final judgment of the United States District Court for the Southern District of New York (the “District Court”), and thus this Court has jurisdiction under 28 U.S.C. § 1291. Plaintiff’s class action complaint alleges federal securities law violations by Defendants Renewable Energy Group, Inc. (“REGI” or the “Company”), and its current and former senior officers Randolph L. Howard, Cynthia J. Warner, Chad Stone, and Todd Robinson, and thus the District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331, federal question, and the Class Action Fairness Act, 28 U.S.C. § 1332(d).¹

The District Court’s final Judgment (ECF No. 71) of January 20, 2022 disposed of all parties’ claims. SPA-13. Plaintiff’s Notice of Appeal (ECF No. 74), dated February 18, 2022, was filed within 30 days of the judgment and is therefore timely under Federal Rule of Appellate Procedure 4(a)(1). A-627 – A-629.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Did the District Court err by dismissing, without leave to amend, Plaintiff’s Complaint, for lack of allegations from which a “strong inference of scienter” may be drawn, even though:

¹ Unless otherwise noted, capitalized terms not defined have the meanings ascribed in the Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws (ECF No. 58) (“Complaint”), all emphasis added, internal citations omitted, and citations to “¶” refer to the Complaint. A-16 – A-110.

1) Defendants failed until **February 2021** to disclose a major incorrect tax credit claim that forced REGI to pay \$40.5 million back to the IRS, resulted in a sharp drop in the price of REGI stock, and required a restatement of financial statements, even though defendants REGI, Warner, Stone and Robinson had actual knowledge of an underlying blending problem and inadequate internal controls as the Company had remediated the blending issue by at least **September 2020**;

2) Defendants had left internal controls and basic accounting tasks so unreviewed, unmonitored, and ignored that, in April 2020, even though defendants REGI, Warner and Stone had told investors that the Company expected a gain of “adjusted EBITDA in the range of \$20 to \$35 million” in 2Q20, the reality was that, due to “calculation errors” the real guidance was a loss of \$2 to \$12 million, as admitted in June 2020; and

3) Even after the June 2020 admission, defendants REGI, Warner, Stone and Robinson failed to improve internal controls and procedures over basic accounting tasks like reconciliations that would have detected prior false statements and prevented future ones, and thus the tax credit issue remained undetected for another three months and undisclosed for another nine months.

STATEMENT OF THE CASE

A. Introduction

This is a federal securities fraud case brought as a class action by REGI shareholders. Judge Cote dismissed Plaintiff's Complaint in its entirety, without leave to amend, on Defendants' Rule 12(b)(6) motion to dismiss. The decision below is reported as *In re Renewable Energy Grp. Sec. Litig.*, No. 21-CV-1832 (DLC), 2022 WL 179830 (S.D.N.Y. Jan. 20, 2022).

REGI undisputedly made egregiously incorrect statements as a result of shoddy internal controls over the course of three years which were revealed in two different ways. These misstatements directly caused drops in the price of the Company's shares when the truth became known, and led to a restatement of nearly three years of financials, the return of \$40.5 million to the IRS, and the termination/demotion of top executives. Even worse, with respect to the second revelation – a lengthy failure to blend small amounts of petroleum diesel (“petrodiesel”) with biodiesel, as required for federal tax credits, which REGI's controls failed to detect – after learning of and correcting the blending problem, defendants REGI, Warner, Stone and Robinson still hid the truth from investors for another six months while making affirmative misrepresentations about the adequacy of the Company's controls in its 3Q20 10-Q and related public statements.

The District Court dismissed the Complaint, without leave to amend, on the sole ground that Plaintiff had failed to adequately allege scienter under the Private Securities Litigation Reform Act (“PSLRA”). However, as alleged in the Complaint, the Company’s own documents show full, actual knowledge of the blending and underlying internal control failures for at least six months before it was finally disclosed. With respect to the first revelation – a “calculation error” that led to REGI predicting a large gain instead of a large loss – the error was so large, internal controls were so lacking, and the mistake was so basic and avoidable with even minimum due diligence that it gives rise to a strong inference of recklessness, when the Complaint is read holistically and with all inferences in Plaintiff’s favor.

These two manifestations of REGI’s shoddy internal controls could have been prevented – as conceded with each revelation – if Defendants had included reconciliations or cross-checks to detect incorrect values as part of the Company’s processes and procedures. As REGI’s CEO or CFO, each defendant designed and/or supervised the internal control over financial reporting in order to provide investors reasonable assurance regarding the reliability of the Company’s financial reporting. Defendants have admitted that those internal controls were inadequate during the Class Period, causing large losses to shareholders when the truth became known. As such, taken as a whole and accepted as true, Plaintiff’s allegations give rise to the requisite inference of scienter and should be upheld.

B. Facts

REGI touts itself as “the leading U.S. advanced biofuel refinery” and claims to excel at producing biodiesel and mixing, tracking and selling biofuel. A-16 – A-110 at ¶¶2, 34, 120. As a key component of its business, particularly its revenue, REGI capitalizes on biodiesel tax credits (“BTCs”), a \$1.00 excise tax credit the federal government pays for each gallon of blended biofuel a company produces. *Id.* at ¶¶2, 36, 38, 40, 48, 65. To earn the BTC, a company must blend pure biodiesel (“B100”) with petro-diesel to yield a mix that contains at least 0.1% petro-diesel (“B99.9”), and then use that mixture or sell it to a third-party. *Id.* at ¶¶2, 36, 48, 59. If a company’s BTCs exceed its tax liability, the government pays the company the overage. *Id.* at ¶¶2, 36.

As such, BTCs are essential to REGI’s profitability. For example, when Congress retroactively reinstated the BTC for 2017, REGI’s 2017 net loss of \$79.1 million turned into adjusted net income of \$206.8 million. *Id.* at ¶¶40, 43. The BTC was thus a critical focus for Defendants and investors. *See, e.g., Id.* at ¶¶5, 46, 65 (BTCs were “a really big deal for the company” and were important “to the entire company” because they were “a substantial amount of money,” so the Company took BTCs “seriously”). As one analyst described it, “the BTC is still what ultimately makes or breaks the [C]ompany’s financial performance” because “[w]hen the BTC is in place, the business turns in healthy profits” and without the BTC, REGI “would

need to grow production volumes to near impossible levels to have any shot of being profitable.” *Id.* at ¶40.

But the BTC exists within a dynamic regulatory framework that poses unique risks requiring biodiesel companies like REGI to operate with specialized sophistication. *Id.* at ¶¶3, 39, 51. Congress has allowed the BTC legislation to lapse multiple times. *Id.* Each time, Congress has reinstated the BTC retroactively, but until each reinstatement, biodiesel companies face uncertainty as to whether, when, and on what terms the BTC will be available. *Id.*

Because of that unpredictable regulatory environment—involving multiyear lapses and sudden retroactive renewals—REGI must be even more vigilant about maintaining proper internal controls over operations and accounting. *Id.* at ¶¶4, 39-40, 66-67. Moreover, the Company had previously disclosed a material weakness in internal control over financial reporting relating to its blended biofuel sales based on that control not being effective as of June 30, 2016 and September 30, 2016. Add. 2.

The internal control over financial reporting, in particular, is a process designed by, or supervised by, a company’s CEO and CFO and effected by its Board of Directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP. A-16 – A-110 at ¶81. Defendant Howard was responsible for REGI’s internal controls as CEO

from July 2017 to January 2019, and was succeeded by defendant Warner who still holds the position. *See id.* at ¶¶25-26. They also set REGI’s “tone at the top” that affects integrity, ethics, and other factors of a positive control environment. *See id.* at ¶83. Indeed, “[i]n any organization, ‘the buck stops’ with the chief executive. He or she has ultimate ownership responsibility for the internal control system The influence of the CEO on an entire organization cannot be overstated.” *Id.* Defendant Stone was responsible for REGI’s internal controls as CFO from August 2009 to December 2020, and was succeeded by defendant Robinson. *See id.* at ¶¶27-28. The Company’s accounting was handled through a J.D. Edwards system and rolled up to Stone or Robinson as CFO. *See id.* at ¶64.

Each quarter during the Class Period, REGI confirmed that “[d]isclosure controls and procedures are designed to ensure that information required to be disclosed in the Company’s reports we file or submit under the Securities Exchange Act ... is accumulated and communicated to management, including our [CEO] and the [CFO], as appropriate, to allow timely decisions regarding required disclosure.” Add. 3 – Add. 32. The Company also confirmed that only after its “management, under the supervision of and with the participation of the CEO and CFO performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15-d-15(e) under the Securities Exchange Act ... as of the end of the periods covered by this report” did it “conclude[] that our disclosure

controls and procedures are effective.” *Id.* Likewise, the Company confirmed that its “management is responsible for establishing and maintaining adequate internal control over financial reporting” and that after “conduct[ing] an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission ... management concluded that our internal control over financial reporting was effective.” *Id.*

When the BTC lapsed, REGI had to adapt its operations to weather an indefinite period of net losses, as well uncertainty as to whether and when the BTC, and profitability, would return. A-16 – A-110 at ¶¶4, 40, 47, 50-51. During the lapse during the Class Period, defendant Stone assured investors that the Company’s operational plan included “monitoring plant by plant,” “positioning [its] balance sheet to weather this storm,” and “watching margins at plants all the time.” *Id.* at ¶147. The CEO defendants also repeatedly spoke to investors about their own efforts and focus on getting the BTC reinstated. *See id.* at ¶46. Moreover, Defendants detailed for investors the precise impact an expected reinstatement would have on REGI’s financial statements, particularly its adjusted EBITDA, every quarter before the BTC was reinstated (*id.* at ¶47):

Earnings Announced	Results Quarter	Gallons Sold	Adjusted EBITDA w/o BTC	Adjusted EBITDA with BTC
5/3/18	1Q18	135 million	\$17.5 million	\$60 million
8/6/18	2Q18	172 million	\$42.3 million	\$108.5 million
11/6/18	3Q18	179 million	\$34.6 million	\$104.6 million
3/5/19	4Q18	163 million	\$46 million	\$103 million
5/2/19	1Q19	162 million	(\$27 million)	\$28 million
8/6/19	2Q19	197 million	(\$42 million)	\$39 million
11/5/19	3Q19	188 million	\$11 million	\$88 million
3/5/20	4Q19	153 million	\$16 million	\$65 million

When the BTC was reinstated in December 2019, investors believed that Defendants had the processes and procedures in place to prepare the submissions to the IRS to obtain the BTCs as they had done in the past. After all, on the first day of the Class Period, defendants Howard, Robinson and Stone had detailed precisely how REGI accounted for the BTC reinstatement in 2017 (*id.* at ¶¶43-44):

- Robinson: “[T]he net benefit of that [BTC] reinstatement will be reflected in our GAAP financial statements for the first quarter of 2018. Because the credit relates to our 2017 operations, our 2017 adjusted net income and adjusted EBITDA reflect the allocation of the net benefit of the reinstatement based on gallon sold in each quarter. **The IRS updated it’s guidance on the process for filing for the BTC refund yesterday and we have begun the process of filing for those refunds.**”
- Howard: “**With the reinstatement last month of the BTC, we regenerated \$230 million in adjusted EBITDA for 2017.** This exceeds our previous best year by \$80 million and is more than 50% higher than our previous high of \$150 million of adjusted EBITDA.”
- Stone: “You can see the reconciliation of adjusted net income to GAAP net income in our earnings release, but **the most significant adjustment again relate to the retroactive BTC reinstatement**, the non-cash charges for the impairment of assets and for the convertible debt conversion liability. Our adjusted net income for the fourth quarter was \$78 million or \$1.97 per share.

Adjusted EBITDA was \$58.8 million, incorporating the reinstatement of the tax credit in the fourth quarter of 2017.”

Not only did Defendants demonstrate knowledge of how the BTC was accounted for in adjusted EBITDA, they proclaimed REGI’s expertise in blending, selling, and tracking B99.9. *Id.* at ¶¶2, 33-34, 120. To earn BTCs, the Company had to precisely blend B99.9; track the dates and amounts of B99.9 usage; track the prices, purchasers, dates, and amounts of B99.9 sales; and calculate revenues and net income without the BTC. *Id.* at ¶¶4, 37, 57, 59, 67. That tracking was vital for the Company to file the requisite information with the IRS to obtain BTCs. *Id.* When speaking to investors, therefore, Defendants repeatedly touted REGI’s increasing abilities and protocols for blending, selling and tracking B99.9 (*id.* at ¶¶52-53, 134):

- 5/2/19 - Warner: *We’ve been using our production capacity to build inventory* and basically play an arbitrage with the lower feedstock prices that we tend to experience in the winter and the higher product margins that we get in the summer ... enabl[ing] us to take advantage of that increased production. And, of course, *we are developing a very substantial BTC benefit as we’re doing that.*
- 3/05/20 - Warner: The Company’s “blending volumes [had] expanded substantially” to “nearly 116 million blended gallons” in 2019, so “blended fuel gallons grew 29% in [the] fourth quarter and 65% for the year.”
- 4/30/20 - Warner: “[W]e’re making good progress in **increased proprietary blending**, which both captures the full dollar BTC and enhance[s] the demand for biodiesel.”
- 8/4/20 - Warner: “So there’s a dual element of capturing the full value across the whole value chain as well as being able to **increase the uptick of our [blended] products** more rapidly, by being able to sell direct to customers.... So we’ve seen **uptick with 107% increase in the blends** of biodiesel into renewable diesel.”

- 11/5/20 - Stone: “[W]e brought down sales volumes of petroleum diesel quite significantly as we **shifted our blending strategy** to higher margin opportunities.”

As a result, analysts took note that REGI blended in-house rather than relying on third-party blenders. *Id.* at ¶54. After meeting with defendants Howard and Stone, for example, an analyst noted how the “strategic move into blending expands the profit potential” and “helps capture a larger portion of compliance incentives.” *Id.*

In sum, Defendants portrayed REGI as a leader in the burgeoning biodiesel industry, with the concomitant internal controls and processes. *Id.* at ¶¶2, 5, 8, 13, 33-35, 88, 97, 105, 114, 124, 136, 149, 160, 173, 185, 196, 204. They repeatedly described to investors the scrutiny they applied to the operational and accounting effects of BTC lapses and reinstatements. *Id.* at ¶¶5, 43-47, 92-93, 95, 101, 108, 117, 121, 129-31, 133, 138, 141-43, 147, 151, 154-56, 162, 164, 167-68, 175, 177, 179-81, 187, 189-91, 193, 197, 199, 205. They also touted REGI’s initiatives to increase blended biofuel sales—and, in turn, increase potential BTC revenue—including equipping its crown jewel biodiesel production facility in Seneca, Illinois (“Seneca Plant”) with a new automated 24/7 refueling station. *Id.* at ¶¶5, 33, 49, 68-69. Simply put, REGI appeared to be a biodiesel and BTC expert. *Id.* at ¶34.

Defendants’ representations proved to be false. *Id.* at ¶¶6, 10-14, 209-10, 212, 214-18. In reality, REGI did not have adequate operational and accounting controls and struggled to handle basic aspects of operating in the biodiesel space. *Id.*

On April 30, 2020, defendants REGI and Warner told investors that they expected a 2Q20 gain of “adjusted EBITDA in the range of \$20 to \$35 million.” *Id.* at ¶179. That guidance, and defendants Stone and Warner’s comments explaining why it had been reduced from their prior guidance of \$37 to \$38 million during the 1Q20 Earnings Call, signaled to analysts and investors that the new projected gain was based on defendants REGI, Warner, and Stone’s careful assessment of the Company’s underlying performance and accurately reflected its health. *See id.* at ¶¶180-81 (Stone: “we know we’re sitting on a position that we track regularly”; Warner: “from a controllable factor standpoint, our underlying performance is a big part of [the adjusted EBITDA]”). As one analyst noted, “we see the 2Q20 guide as healthy” and “reiterate our Buy rating and \$33 price target.” *See* A-299.

On June 23, 2020, however, REGI suddenly announced that that guidance was wrong due to “calculation errors.” A-16 – A-110 at ¶¶6-7, 209, 212. It was actually a \$2 to \$12 million **loss**. *Id.* That revelation of poor and extremely reckless internal controls caused REGI’s share price to fall \$5.85, or 20.5%. *Id.* at ¶¶7, 211.

Defendants REGI, Warner, and Stone’s statements had conveyed that a sophisticated Company with the requisite accountants and controls had carefully compiled relevant data, verified that data, calculated projected earnings, tested those calculations, and cross-checked the final data before publicizing it. *See id.* at ¶¶5, 177, 179-83. The recently filed 1Q20 10-Q, for example, represented that defendants

Warner and Stone “performed an evaluation of the effectiveness of our disclosure controls and procedures” and “concluded that our disclosure controls and procedures were effective as of March 31, 2020.” *See id.* at ¶¶26-27, 185; Add. 27. Without that vital scrutiny on disclosure controls and procedures, any guidance would be useless and materially misleading to investors. A-16 – A-110 at ¶186.

In reality—and despite their touted expertise with BTCs—Defendants did not have basic accounting functions in place. *Id.* at ¶¶6, 57. As one analyst noted, the Company “admitted that previously issued guidance contained calculation errors” which were “embarrassing” and “not exactly what shareholders want to learn.” *Id.* at ¶¶7, 212. Another analyst noted that “the forecast error was traced back to ... MS exchange sheets weren’t correctly reconciled” and “[management] explained the guidance given in April [2020] included faulty BTC assumptions that were missed by accounting staff review.” *Id.* at ¶210. Defendants REGI, Warner, and Stone’s stated 2Q20 earnings guidance of \$20 to \$35 million had no basis in fact; the truth was expected loss of \$2 to \$12 million. *See id.* at ¶¶6, 58, 209.

Despite that partial disclosure, defendants REGI, Warner, Stone and Robinson continued misrepresenting REGI’s true state of affairs. *Id.* at ¶8. On August 5, 2020—in the next 10-Q—defendants REGI, Warner and Stone reiterated that “[m]anagement, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and

procedures” and “concluded that our disclosure controls and procedures were effective as of June 30, 2020.” *See id.* at ¶¶26-27, 196; Add. 30. They made the same assurance in the 3Q20 10-Q. *See* A-16 – A-110 at ¶¶26-27, 204; Add. 32. Investors believed and relied on those representations. *See* A-16 – A-110 at ¶¶229-31. As defendants REGI, Warner and Stone reiterated that the Company’s internal controls remained effective and it was leading the biodiesel and BTC space, its stock price recovered. *Id.*, *see also id.* at ¶¶8, 213. As a result, by mid-February 2021, its stock price had more than quadrupled since the June 2020 fiasco. *Id.* at ¶231.

In reality, Defendants’ processes were far more deficient than they had revealed on June 23, 2020. *Id.* at ¶¶8-13, 17, 61, 192, 195, 198, 200, 203, 206, 208. Defendants lacked adequate processes for the most basic operational and accounting functions. *Id.* There were no processes in place to:

- ensure that the Company’s plants were actually blending petro-diesel with biodiesel in order to create B99.9;
- track inventory correctly to have real time knowledge of the number of sold gallons of B99.9 (as opposed to B100) triggering entitlement to the BTC; or
- confirm that the Company’s BTC filings with the IRS were accurate. *Id.*

As a result, since January 1, 2017, REGI had improperly claimed and received from the IRS certain BTCs.² Over three-and-a-half-years, the Company had sold what was supposed to be B99.9—but was B100—to two dozen customers. *Id.* at ¶¶9, 214-15. From 2017 to 2020, the Company’s diesel additive system at its flagship Seneca Plant had repeatedly failed to add 0.01% of petro-diesel to certain B100 biodiesel. *Id.* And Defendants had failed to create a process to confirm or check that petro-diesel was being put into B100 to make B99.9.³

On top of that failure, REGI had sought and received BTCs for those B100 gallons and included that revenue in its public financials. *Id.* at ¶9. But its customers (and not it) were the parties eligible for the BTCs. *Id.* **In other words, the Company had sold the wrong biodiesel to its customers, appropriated their BTCs, and reported false financial figures to investors.** *Id.* And this began occurring mere months after the Company’s November 2016 disclosure of the material weakness in its internal control over financial reporting.

Those facts were concealed from investors until February 25, 2021, when defendants REGI, Warner and Robinson disclosed that REGI was not the “first

² *Id.* at ¶¶9-10, 13, 16-17, 89, 94, 98, 102, 104, 106, 110, 113, 115, 119, 123, 125, 127, 132, 135, 137, 139, 144, 148, 150, 152, 157, 159, 161, 163, 165, 169, 172, 174, 176, 178, 182, 184, 186, 188, 192, 195, 198, 200, 203, 206, 208, 214-15.

³ *Id.* at ¶¶8, 17, 57-61, 85, 87, 89, 94, 96, 98, 102, 104, 106, 110, 113, 115, 119, 123, 125, 127, 132, 135, 137, 139, 144, 148, 150, 152, 157, 159, 161, 163, 165, 169, 172, 174, 176, 178, 182, 184, 186, 188, 192, 195, 198, 200, 203, 206, 208, 214-16.

blender” and hence not the “proper claimant for certain BTC payments on biodiesel it sold between January 1, 2017 and September 30, 2020” (“February 2021 Disclosure”) *id.* at ¶¶10, 26, 28, 214-15. They further disclosed that the Company had improperly recognized, and thus had to restate, “\$38.2 million in cumulative revenue from January 2018 through September 30, 2020.” *Id.* They admitted that, because “the aggregate BTC adjustment is material in 2019,” the Company had to “restat[e] its financial statements for the years ended December 31, 2019 and 2018 and the quarters ended March 31, June 30 and September 30, 2019 and 2018.” *Id.*

Additionally, they admitted a series of deficiencies, including “[a] material weakness in the Company’s internal control over financial reporting directly related to the restatement ... as of December 31, 2020 and December 31, 2019.” *See id.* at ¶¶11, 217, 224. They further admitted that the Company did not previously have and had only recently “established ... additional policies and controls designed to ensure that the required blending takes place and that we properly file for the BTC.” *Id.* at ¶¶11, 218. Specifically, there had been **no** policies and procedures to:

- “implement a control system calculation and readout tool that enables the loading operator to validate that the proper number of petroleum diesel gallons were added to each load,”
- “limit[] the loading to modes where the existing system is known to be functional until the system is redesigned to work in all operating modes,”
- “perform[] additional local reconciliations weekly to validate that the amount of petroleum diesel used matches the amount of petroleum diesel required to be blended,” or

- “review[] monthly inventory reconciliations prior to filing for BTC to reconfirm that the required volume of petroleum diesel has been blended.” *Id.* at ¶¶12, 59, 61, 218.

Since the disclosure indicates that the blending issue ceased by September 2020, it fairly implies that the problem had been discovered and remediated by then. A problem that was ongoing for 45 months does not go away on its own. Nevertheless, no defendant explained why prior misstatements were repeated in November 2020 in REGI’s 3Q20 financials and related statements, or why the misstatements were not disclosed from September 2020 until February 2021.

Defendants must have been aware of or recklessly disregarded the blending problem well before September 2020, as the failure to add the required petro-diesel is obvious and easy to detect. *Id.* at ¶64. The amount of diesel being consumed over time and in the aggregate is noticeable. Someone at REGI would have seen: 1) “a stark difference” between receipts from when B99.9 was correctly mixed versus after the diesel additive system failures; 2) the petro-diesel tank not being consumed or refilled; and/or 3) petro-diesel not being reordered (because it was not being consumed). *Id.* at ¶60. Yet Defendants did not have basic operational or accounting controls or checks to detect this or other major problems. *Id.* at ¶59.

Worse yet, REGI revealed only in February 2021 that it had previously begun an investigation and discussion with the IRS, leading to an agreement to “return[] the incorrectly claimed BTC credits, totaling \$40.5 million” to the IRS “to correct

the REG Seneca BTC claims.” *Id.* at ¶¶13, 214. And since the problem had apparently been found, investigated, and resolved by September 30, 2020 (*id.* at ¶¶10, 17, 214), defendants REGI, Warner and Stone were silent for at least six months. Instead of providing investors with accurate information, they again claimed in November 2020, without corrections or updates, that the Company’s “internal controls” were “effective.” *Id.* at ¶¶13, 204.

These sudden, material revelations were stunning and detrimental. *Id.* at ¶¶14, 221. REGI had consistently sold itself as a leader in producing and blending biodiesel and obtaining BTCs, yet it lacked policies and controls for basic tasks “to ensure that the required blending takes place and that we properly file for the BTC.” *Id.* at ¶¶2, 11, 14, 34, 120, 218. Its share price consequently fell \$8.17, or 9.5%, to close at \$77.77 on February 26, 2021, and steadily declined thereafter, closing at \$46.99 on August 20, 2021. *Id.* at ¶¶14, 222.

Analysts recognized the reputational harm from these stark admissions. *Id.* at ¶15. One noted “we expect some [investor] frustration, as it is the second reporting ‘error’ in the last three quarters,” and another specifically asked defendants Warner and Robinson, “given what happened middle of last year now, given this restatement process, what are you doing as management to keep investor confidence that these kinds of things aren’t going to happen again?” *Id.* at ¶¶15, 56, 219, 221.

In sum, Defendants were supposed to be experts at producing and selling biofuel, navigating BTC lapses, obtaining BTCs when available, and providing accurate financial reporting that accounted for the dynamic BTC paradigm. *Id.* at ¶¶5, 16, 33-35. Instead, they provided erroneous guidance, failed to properly mix biodiesel, misappropriated BTCs, made false claims to the IRS, and publicly reported years of materially inaccurate financials. *Id.* at ¶¶16-17, 209-10, 212, 214-17. As a result of Defendants’ wrongful acts and omissions, Plaintiff and the putative Class suffered substantial losses. *Id.* at ¶¶18, 226-27.

C. Procedural History

Defendants responded to the Complaint with a Rule 12(b)(6) motion to dismiss (ECF Nos. 59-61) (“Motion”). A-111 – A-262. The Motion did not dispute that the Complaint adequately alleged false statements and omissions, loss causation, and damages. Instead, Defendants sought dismissal on the sole ground that the Complaint failed to adequately allege “scienter, *i.e.*, a wrongful state of mind,” in light of the PSLRA requiring that it be plead with particular “facts giving rise to a strong inference that the defendant acted with the required state of mind.” A-126 – A-127. (quoting 15 U.S.C. § 78u-4(b)(2)(A)). Defendants claimed that their misstatements were merely inadvertent, and that the alleged facts at most “suggest mere negligence for not discovering the issues sooner.” A-130, A-137.

In opposition, Plaintiff noted that scienter is established when a defendant utters a statement knowing it is false (knowledge), or is indifferent to its truth or falsity (reckless). A-285. Plaintiff pointed to specific allegations in the Complaint quoting the February 2021 Disclosure that the Seneca Plant blending error impacted biodiesel that REGI “sold between January 1, 2017 **and September 30, 2020.**” Liberally read, this disclosure shows that defendants REGI, Warner, Stone and Robinson knew of and corrected the blending problem by at least September 2020, and negotiated a settlement with the IRS, yet failed to disclose this major, highly material information requiring a restatement of REGI’s financials and the return of \$40.5 million to the IRS until February 2021, causing a large drop in the Company’s share price. A-280 – A281 (citing ¶¶199-208, 214-15).

Moreover, while defendants REGI, Warner, Stone and Robinson had to have known of the blending issue by September 2020, REGI’s November 2020 3Q20 10-Q and press release said nothing about it and even affirmatively misrepresented that “disclosure controls and procedures” and “internal control over financial reporting” were “effective as of September 30, 2020.” A-16 – A110 at ¶204; A-281.

Plaintiff’s opposition further pointed to allegations showing that Defendants’ major and wildly inaccurate misstatements resulted from weak internal controls over the course of more than three years, which allowed basic and easily discoverable errors to occur. A-282 – A-287. Those errors involved matters on which Defendants

had access to the pertinent information and a duty to monitor and to familiarize themselves with the facts. *Id.* Management had knowledge by at least June 2020, when it disclosed the first “calculation error” to investors, that REGI’s internal controls were inadequate. *Id.* Yet defendants REGI, Warner, Stone and Robinson failed to take any corrective action that would have caught the blending error that was corrected by September 2020 but not disclosed until February 2021. *Id.* Plaintiff cited cases holding that scienter is adequately alleged under the PSLRA where, as here, a complaint references information “that the defendants could have and should have learned in the course of reasonable due diligence,” because the failure to review accessible information weighs in favor of an inference of knowledge or reckless disregard for the truth. *Id.* at 16 (quoting *Yannes v. SCWorx Corp.*, 2021 WL 2555437, at *4 (S.D.N.Y. June 21, 2021), and other authorities).

Plaintiff concluded his opposition by expressly requesting leave to amend if the District Court decided to grant Defendants’ Motion. A-292 – A-293.

Judge Cote granted Defendants’ Motion and directed that the case be closed, implicitly denying Plaintiff’s request for leave to amend. SPA-12.

The District Court found the Complaint did not adequately allege scienter as it did not “reference any specific information that a defendant knew or should have known that would have alerted them” to “the calculation errors [or to the] Seneca

Plant blending errors” or “identify any reports or statements that a defendant had a duty to monitor which would have alerted the defendant to the errors.” SPA-10.

With respect to Plaintiff’s contention that the February 2021 Disclosure showed that defendants REGI, Warner, Stone and Robinson had been aware of the blending problem by September 2020 as it had been remediated by then, the District Court stated that the Complaint “does not allege that the problem was discovered at any particular point in time,” and the allegations were “consistent with the discovery of the problem during the fourth quarter of 2020.” *Id.* The delay in disclosing from the “fourth quarter of 2020” (10/1/2020-12/31/2020) until February 2021 was deemed non-actionable because a “company is permitted a period of time to investigate any problem it detects before reporting it to the public.” SPA-11 (quoting *Slayton v. Am. Exp. Co.*, 604 F.3d 758, 777 (2d Cir. 2010)).

SUMMARY OF THE ARGUMENT

The sole issue on this appeal is whether Plaintiff’s Complaint adequately alleges scienter, *i.e.*, that Defendants acted intentionally or recklessly in disseminating admittedly false information that damaged shareholders. Defendants do not challenge that the Complaint adequately pleads falsity, loss causation, and damages. For Rule 12(b)(6) purposes, there is thus no dispute that REGI, the self-touted leading U.S. advanced biofuel refinery:

- published the wrong guidance—specifically, a quarterly **gain** of at least \$20 million instead of a quarterly **loss** of at least \$2 million;

- amassed over 40,000 gallons of rogue petro-diesel that should have been blended into biodiesel sold over the prior **45 months**;
- misappropriated **\$40.5 million** in Biodiesel Mixture Excise Tax Credits, a.k.a. blender's credits (BTCs), that should have gone to customers;
- made an inaccurate filing with the IRS after waiting over **22 months** for the BTC to be reinstated; and
- published nearly **three years** of inaccurate financials.

It is undisputed, or at least not credibly disputable, that defendants REGI, Warner, Stone and Robinson acted with scienter since they were aware of the blending error by September 2020, as the Company's February 2021 disclosure indicates. Despite that actual knowledge, REGI's November 2020 3Q20 financials and related statements affirmatively misstated the truth which was not disclosed until February 2021. The District Court granted Defendants' Motion on this particular issue only because, in its view, the Complaint "does not allege that the problem was discovered at any particular point in time," and the allegations were "consistent with the discovery of the problem during the fourth quarter of 2020." SPA-11. However, the allegations are more fairly read as alleging discovery by September 2020, and Plaintiff is entitled to the most liberal reading possible, with all reasonable inferences drawn in his favor. Read liberally, the Complaint alleges discovery by September 2020, based on REGI's own disclosure. At an absolute minimum, if the Complaint is somehow read as not alleging September 2020 discovery, Plaintiff should have been afforded an opportunity to make this allegation with greater clarity.

With respect to the misrepresentation and nondisclosure claims set forth in the Complaint apart from the six-month concealment of the blending problem and further internal control deficiencies, all claims are actionable because Plaintiff adequately alleged that the false statements were made at least recklessly. The misstatements were made with reckless disregard for the truth because Defendants had unfettered access to information showing the truth and failed to check information they had a duty to monitor. The District Court incorrectly found that Plaintiff failed to identify specific “reports or statements” revealing the truth, which Plaintiff did in fact do. In any event, Plaintiff may rely on unwritten information available to Defendants, and writings need not directly contradict a misstatement, as long as they contain information “that should have put the officers on notice that their public statements were false.” *In re Dynex Cap., Inc. Sec. Litig.*, 2009 WL 3380621, at *14 (S.D.N.Y. Oct. 19, 2009). In this case, the Complaint identifies specific documents and information that contain such reasonably available facts.

Moreover, and in any event, lesser specificity is needed where, as here, a strong inference of recklessness arises from other alleged facts. The Complaint alleges financial misstatements of such great magnitude that GAAP requirements were violated and a restatement was required. The Individual Defendants are current and former REGI officers at the highest level, CEOs or CFOs, and they all spoke knowledgeably, repeatedly, and in great detail about REGI’s core operations, on

matters of critical concern to REGI's profitability and viability, and their statements on such matters proved to be false. Defendant Stone was demoted and another senior officer was terminated as a result of the false statements. These alleged facts bolster the strong inference that the false statements were made recklessly.

There is also no dispute that the Individual Defendants—REGI's CEOs or CFOs—did nothing of substance to prevent those blunders. Indeed, the Individual Defendants argue that they lacked knowledge of those material errors and, worse yet, that they did not even have a duty to investigate or monitor those critical components of the company they were leading. The only dispute is that Defendants call their conduct negligent, while Plaintiff calls it reckless.

Moreover, in addition to the actual knowledge in the affirmative misstatements and nondisclosures from September 2020 to February 2021, all misstatements alleged in the Complaint, including those related both to the 45-month long blending error and the incorrect quarterly guidance showing a gain of at least \$20 million instead of a loss of at least \$2 million, were the product of reckless indifference. The statements are undisputedly false, and the only question on this appeal is whether the Complaint's allegations, taken as true, read as a whole, and construed liberally in Plaintiff's favor, give rise to a strong inference that Defendants made these statements with reckless disregard for the truth – an inference that is at

least as strong as the competing one that they were merely negligent. The Complaint's allegations are more than ample to allow such an inference.

It is reckless for a publicly traded company to guide to a \$20-\$35 million quarterly **gain** when—because of defective internal controls—the true calculation was a \$2-\$12 million quarterly **loss**. It is reckless for that company's CEO and CFO to subsequently do nothing to bolster the internal controls and, instead, to certify that they remained effective. Finally, it is reckless when a leading biodiesel company sells over 40 million gallons of the wrong biodiesel over a 45-month period. Basic monitoring, managerial oversight, accounting cross-checks, or other internal controls would have detected and prevented those repeated errors, and it was reckless for Defendants to repudiate their obligations to implement those controls.

ARGUMENT

I. Plaintiff Is Entitled to *De Novo* Review.

When adjudicating an appeal of a Rule 12(b)(6) dismissal, this Court reviews the matter *de novo*, construing the complaint “liberally, accepting all factual allegations therein as true and drawing all reasonable inferences in the plaintiff's favor.” *Sacerdote v. N.Y. Univ.*, 9 F.4th 95, 106-07 (2d Cir. 2021); *Elias v. Rolling Stone LLC*, 872 F.3d 97, 104 (2d Cir. 2017).

These same standards apply where, as here, the complaint alleges securities fraud, except that the plaintiff must also satisfy the heightened pleading standards of

Rule 9(b) and the PSLRA which requires pleading with particularity of “facts giving rise to a strong inference that the defendant acted with the required state of mind.” *In re Express Scripts Holdings Co. Sec. Litig.*, 773 F. App’x 9, 11-12 (2d Cir. 2019).

To qualify as “strong,” the inference of scienter in a securities fraud complaint “must be cogent and at least as compelling as any opposing inference of nonfraudulent intent.” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 314 (2007). But as with all complaints, the allegations are accepted as true and construed liberally and in their entirety, with all allegations scrutinized “holistically.” *Id.* at 322, 326. If two competing inferences are equally compelling, the allegations are adequate, because a “tie ... goes to the plaintiff.” *Okla. Firefighters Pension & Ret. Sys. v. Lexmark Int’l, Inc.*, 367 F. Supp. 3d 16, 39 (S.D.N.Y. 2019); *In re Banco Bradesco S.A. Sec. Litig.*, 277 F. Supp. 3d 600, 666–67 (S.D.N.Y. 2017).

Speculation and conclusory allegations will not suffice, but a plaintiff need not plead scienter with “great specificity” as long as there are enough facts to support “a strong inference of fraudulent intent.” *Ganino v. Citizens Util. Co.*, 228 F.3d 154, 169 (2d Cir. 2000). Plaintiff “need only plead circumstances that provide at least a minimal factual basis for their conclusory allegations of scienter.” *Express Scripts*, 773 F. App’x at 11–12. (quoting *San Leandro Emergency Med. Grp. Profit Sharing Plan v. Philip Morris Cos., Inc.*, 75 F.3d 801, 813 (2d Cir. 1996)); see *Cohen v. Koenig*, 25 F.3d 1168, 1173 (2d Cir. 1994) (only “minimal factual basis” as to

scienter needed; great specificity not required because “a plaintiff realistically cannot be expected to plead a defendant’s actual state of mind”).

II. Scienter Is Adequately Plead By Allegations That Defendants Acted With Actual Knowledge or Reckless Disregard for the Truth, the Latter of Which May Be Shown By Allegations That Defendants Had Access to Information Showing the Truth.

As the District Court correctly stated, a securities fraud plaintiff adequately pleads scienter under the PSLRA by alleging facts “constituting strong circumstantial evidence of conscious misbehavior or recklessness.” SPA-8 (quoting *Setzer v. Omega Healthcare Invs., Inc.*, 968 F.3d 204, 212 (2d Cir. 2020)). Recklessness is conduct which is “highly unreasonable” and which represents “an extreme departure from the standards of ordinary care ... to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.” *Novak v. Kasaks*, 216 F.3d 300, 308 (2d Cir. 2000).

Under longstanding Second Circuit precedent, “securities fraud claims typically have sufficed to state a claim based on recklessness when they have specifically alleged defendants’ knowledge of facts or **access to information** contradicting their public statements.” *Setzer*, 968 F.3d at 215 (quoting *Novak*). The requisite “strong inference” of recklessness may be drawn, *inter alia*, from allegations that defendants “knew facts or had access to information suggesting that their public statements were not accurate,” or “failed to check information they had a duty to monitor.” SPA-8 (quoting *Emps.’ Ret. Sys. of Gov’t of the V.I. v. Blanford*,

794 F.3d 297, 306 (2d Cir. 2015). Thus where, as here, a “complaint alleges that defendants knew facts or had **access to** non-public information contradicting their public statements, recklessness is adequately pled for defendants who knew **or should have known** they were misrepresenting material facts.” *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 76 (2d Cir. 2001).

Particularly when a defendant speaks falsely on matters that are “critical” to a company’s success, allegations that the defendant spoke without reviewing available information and conducting due diligence that would have revealed the truth are adequate allegations of scienter under the PSLRA. *In re Aphria, Inc. Sec. Litig.*, 2020 WL 5819548, at *9 (S.D.N.Y. Sept. 30, 2020); *see Yannes*, 2021 WL 2555437, at *4 (denying motion to dismiss because allegations that “defendants could have and should have learned [the truth] in the course of reasonable due diligence”); *Plumbers & Pipefitters Nat. Pension Fund v. Orthofix Int’l N.V.*, 89 F. Supp. 3d 602, 617-18 (S.D.N.Y. 2015) (allegations that “Buxton either knew or had access to information ... contrary to her public statements” suffice to raise an inference of scienter).

III. The Complaint Adequately Alleges Defendants REGI, Warner, Stone and Robinson’s Actual Knowledge of the Blending Problem by September 2020, Affirmative Misrepresentation of the Truth in November 2020 and Failure to Disclose Until February 2021.

The District Court incorrectly stated that Plaintiff relies “exclusively” on recklessness to plead scienter. SPA-9. In fact, the Complaint alleges that defendants

REGI, Warner and Stone made misstatements regarding the blending issue and deficient internal controls with actual knowledge of their falsity.

The Complaint alleges that in February 2021, REGI publicly stated that, due to its failure to blend petro-diesel with biodiesel, it was not the “proper claimant for certain BTC payments on biodiesel it sold between January 1, 2017 and September 30, 2020.” A-16 – A-110 at ¶¶10, 199-208. REGI’s own statement thus indicates that, by September 2020, the blending problem had been identified and remediated, as no improper claims were made after that date. A problem that persists for 45 months is not likely to go away on its own, and no defendant has ever suggested that that this particular issue did so or denied knowledge of it by September 2020.

Despite acquiring actual knowledge by at least September 2020, defendants REGI, Stone and Warner affirmatively repeated their misstatements in November 2020 in 3Q20 financials, and failed to disclose the truth until February 2021. *Id.* at ¶¶26-27, 199-208, 248. One who acts with actual knowledge acts with scienter. *Setzer*, 968 F.3d at 212; *Novak*, 216 F.3d at 308. The allegation that defendants REGI, Stone and Warner acquired actual knowledge by September 2020, supported by REGI’s own February 2021 Disclosure, is more than adequate to satisfy PSLRA’s requirement of pleading particular “facts giving rise to a strong inference that the defendant acted with the required state of mind.” 15 U.S.C. § 78u-4(b)(2)(A).

The District Court did not disagree with this. Instead, it based its dismissal on the notion that the Complaint did not allege that Defendants had knowledge of the problem by September 2020. The District Court stated that the Complaint “does not allege that the problem was discovered at any particular point in time,” and the allegations were “consistent with the discovery of the problem during the fourth quarter of 2020.” SPA-11. But even if the Complaint could be read as only alleging discovery during the fourth quarter of 2020, or as not alleging any particular discovery date, that is irrelevant, as the Complaint must not be construed in Defendants’ favor for Rule 12(b)(6) purposes. The issue is whether the Complaint reasonably **can** be read as alleging discovery by September 2020, and it certainly can. In fact, that is the most natural and reasonable reading, particularly since, according to the Company’s own disclosure, there were no more improper claims after September 2020 and the problem would not likely have gone away on its own.

This is at least a plausible reading, particularly when the Complaint is construed, as it must be, liberally in favor of Plaintiff, with all reasonable inferences drawn in his favor. *Sacerdote*, 9 F.4th at 106-07. The District Court erred by failing to adhere to these well-established rules of construction and dismissing the Complaint simply because the allegations are “consistent” with an interpretation in Defendants’ favor. A claim may be “supported by showing any set of facts consistent

with the allegations in the complaint.” *ATSI Commc’ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007).

Plaintiff certainly intended to allege that defendants REGI, Warner, Stone and Robinson had knowledge by September 2020 and, even if the Complaint is deemed less than precise, that is not a basis for granting a Rule 12(b)(6) motion. *See Atuahene v. City of Hartford*, 10 F. App’x 33, 34 (2d Cir. 2001) (complaint need not be a “model of clarity”); *Solano v. N.Y.*, 2021 WL 4134793, at *8 (N.D.N.Y. Sept. 10, 2021) (“inartful pleading does not provide a basis for dismissal”). The decision below should thus be reversed.

IV. If the Complaint Is Construed As Not Alleging Knowledge by September 2020, Plaintiff Is Entitled to Amend.

As shown above in Part III, Plaintiff’s Complaint does indeed allege that defendants REGI, Warner, Stone and Robinson knew of the blending problem and deficient underlying internal controls by September 2020, as the blending issue had been remediated by then. At the very least, Plaintiff should have been given an opportunity to amend the Complaint to allege this with greater specificity. Plaintiff expressly requested leave to amend if the District Court granted Defendants’ Motion, A-292 – A293, but, without comment, Judge Cote did not grant leave to amend and ordered the clerk to close the case. SPA-12.

Of course, under Rule 15, district courts “court should freely give leave when justice so requires.” This is a “liberal” and “permissive” standard and, at least in the

absence of a court-fixed deadline for amendments, the only “grounds on which denial of leave to amend has long been held proper” are upon a showing of “undue delay, bad faith, dilatory motive, [or] futility.” *Sacerdote*, 9 F.4th at 115 (quoting *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 190 (2d Cir. 2015)), *cert. denied*, 142 S. Ct. 1112 (2022).

In this case, there has been no contention of undue delay, bad faith, or dilatory motive. And an amendment would plainly not be futile. A precise allegation that defendants REGI, Warner, Stone and Robinson had knowledge of the blending problem and underlying deficient internal controls by September 2020 at the latest is supported by the Company’s own February 2021 Disclosure, and would mean that its 3Q20 financials and related statements were knowingly false or omitted material facts and thus actionable. Accordingly, at the very least the judgment below should be vacated, and Plaintiff should be given an opportunity to amend the Complaint.

V. The Requisite Scienter May Be Inferred Even Under the District Court’s Incorrect Construction of the Complaint’s Actual Knowledge Allegations.

The District Court read the allegations concerning Defendants’ knowledge of the blending issue as “consistent” with discovery “during the fourth quarter of 2020.” SPA-11. Plaintiff intended to allege that defendants REGI, Warner, Stone and Robinson acquired this knowledge by September 2020, and read liberally the Complaint so alleges. Even if the Complaint is deemed to only allege discovery

during the fourth quarter of 2020, meaning October 1 through December 31, 2020, it still pleads actionable scienter.

First, REGI's false 3Q20 financials and related statements were made on November 5 and 6, 2020. A-16 – A-110 at ¶¶199-205. Thus, if defendants REGI, Warner, Stone and Robinson learned of the blending problem and underlying deficient internal controls between October 1 and November 5, those misstatements were made with actual knowledge, as was the concealment of this material information until February 2021.

Second, even assuming defendants REGI, Warner, Stone and Robinson did not acquire knowledge of the problem until December 31, 2020 (the last day of 4Q20), almost three months still passed before the truth was finally disclosed on February 25, 2021. *Id.* at ¶214. The District Court found this delay, or apparently any delay from any point in 4Q20 to February 25, 2021, excusable as a matter of law because a “company is permitted a period of time to investigate any problem it detects before reporting it to the public.” SPA-11 (citing *Slayton*).

Of course a defendant cannot delay disclosure indefinitely due to a purported “investigation.” As this Court stated in *Slayton*, “[m]anagers cannot tell lies but are entitled to **investigate for a reasonable time**, until they have a full story to reveal.” 604 F.3d at 777 (quoting *Higginbotham v. Baxter Int’l, Inc.*, 495 F.3d 753, 761 (7th

Cir. 2007)). Here, the District Court had no basis to conclude that a 3-6 month delay in disclosure was, as a matter of law, a “reasonable time” to investigate.

Unless obvious, the reasonableness of any action is a fact issue that must not be resolved on a motion to dismiss. *In re Lavender*, 399 F. App’x 649, 652 (2d Cir. 2010) (reasonableness of reliance is factual issue); *King v. Crossland Sav. Bank*, 111 F.3d 251, 259 (2d Cir. 1997) (“assessment of reasonableness generally is a factual question to be addressed by the jury”); *Kaminsky v. Rosenblum*, 929 F.2d 922, 927 (2d Cir. 1991) (“objective reasonableness of defendants’ actions” is fact issue); *Rekor Sys., Inc. v. Loughlin*, 2020 WL 6898271, at *6 (S.D.N.Y. Nov. 23, 2020) (“reasonable time for rescission is a question of fact ... that cannot be decided on a motion to dismiss”); *Ion Audio, LLC v. Bed, Bath & Beyond, Inc.*, 2019 WL 1494398, at *9 (S.D.N.Y. Apr. 2, 2019) (“[w]hat constitutes a reasonable time is a question of fact for the jury”); *Gamoran v. Neuberger Berman, LLC*, 2012 WL 2148217, at *5 (S.D.N.Y. June 12, 2012) (“[w]hether the board has taken a reasonable amount of time in its investigation is essentially a question of fact”).

In fact, in this case nothing in the Complaint or any other document may properly be considered on a Rule 12(b)(6) motion on the timing or duration of any investigation. REGI stated only that “the Company initiated an investigation, which found that the petroleum diesel additive system at the Company’s Seneca biorefinery was periodically not adding petroleum diesel to certain loads,” with no mention of

date or duration. A-16 – A-110 at ¶¶217. Even Defendants’ briefs contend only that they were “entitled to a reasonable opportunity to investigate” -- they do not contend that a multi-month investigation actually occurred or when any investigation started or ended. A-621. And even if they had made such a contention, it would be improper to consider it. *Kramer v. Time Warner Inc.*, 937 F.2d 767, 773 (2d Cir. 1991) (on a Rule 12(b)(6) motion, “a district court must limit itself to facts stated in the complaint or in documents attached to the complaint as exhibits or incorporated in the complaint by reference” and “matters of which judicial notice may be taken”).

In view of these established legal principles, the District Court had no valid basis to conclude that Defendants’ misstatements and omissions were justified as a matter of law on grounds of “investigation.” The judgment should thus be reversed.

VI. The Complaint Adequately Alleges That Defendants’ False Statements About the 2Q20 Guidance and Pre-September 2020 BTC Revenue Were Made With Reckless Indifference.

The Complaint also properly alleges scienter for the false statements relating to the \$20 to \$35 million EBITDA gain (that was actually a \$2 to \$12 million loss) and the pre-September 2020 BTC revenue (\$40.5 million of which had to be returned to the IRS). *See* A-16 – A-110 at ¶¶25-30, 84-206. The District Court acknowledged that reckless indifference may arise where Defendants had “access to information suggesting that their public statements were not accurate” or “failed to check information they had a duty to monitor.” SPA-8 (quoting *Blanford*).

The Complaint alleges both access to and failure to check such information. The District Court said these allegations were insufficient because the Complaint failed to “specifically identify the reports or statements containing this information” or to “identify any reports or statements that a defendant had a duty to monitor” that would have alerted them to the truth. *Id.* at 10 (quoting *Novak*). Of course, however, “the contradictory facts [need not] be summarized in a single report that explicitly states the direct opposite of the misleading statement. To the contrary, a strong inference of scienter is alleged by specific allegations of various reasonably available facts that should have put the officers on notice that their public statements were false.” *Dynex*, 2009 WL 3380621, at *14. In this case, the Complaint identifies specific documents and information that contain such reasonably available facts. Moreover, in any event, lesser specificity is needed where, as here, a strong inference of recklessness arises from other alleged facts.

A. The Complaint Alleges Defendants’ Access to Specific Documents and Lack of Internal Controls.

Defendants had access to various forms of specific information, written and unwritten, that demonstrated the truth, including information in the Company’s J.D. Edwards system. They were aware of REGI’s system of internal controls and its extreme weaknesses. It is not necessary to allege that they actually read or were consciously aware of this information -- “access” to it is all that is required. *Setzer*, 968 F.3d at 215; *Novak*, 216 F.3d at 311; *Yannes*, 2021 WL 2555437, at *4.

As REGI itself admitted, the initial “calculation error” that yielded a \$20 to \$35 million gain instead of a \$2 to \$12 million loss resulted from “faulty BTC assumptions that were missed by accounting staff review” because “MS exchange sheets weren’t correctly reconciled” and an erroneous “guidance model [was] used in connection with the previous estimate.” A-16 – A-110 at ¶¶209-10. Since accounting rolled up to defendant Stone, and then to defendant Robinson, as the CFO, they and defendant Warner as CEO must have known of, or at least had unrestricted access to the BTC assumptions, the MS exchange sheets, the reconciliation procedure, the guidance model, and all other information used by the accounting staff to calculate the BTCs before they signed REGI’s SEC filings. *See id.* at ¶¶26-30, 64, 256-57. The truth was all there, the “accounting staff” just missed it, and no one checked it. It was reckless for defendants Warner and Stone to repeatedly make false statements contrary to such accessible information.

The second error, failing to blend petro-diesel into biodiesel, was even more egregious, in light of easily accessible information. Records of “receipts of loads of petro-diesel” being delivered to the Seneca Plant would have shown “a stark difference” between when REGI had been correctly mixing the B99.9 blend and after the diesel additive system failures. *Id.* at ¶60. It was noticeable when the petro-diesel tank was not being consumed or refilled and/or that petro-diesel was not being reordered (because it was not being consumed). *Id.* And the plant provided supply

chain data regarding inventory levels and sales that would have shown diesel was not being consumed had adequate controls existed. *Id.* at ¶¶64, 66. Further, a BTC claim required written certifications “setting forth how much biodiesel had been mixed with petro-diesel and in what quantities.” *Id.* at ¶67.

Moreover, and even more importantly, Defendants knew, or at least must have known or had access to, detailed information (written or unwritten) about REGI’s internal control procedures. *Id.* at ¶¶25-30, 247-49, 256-57. Defendants falsely confirmed REGI’s “disclosure controls and procedures” and its “internal control over financial reporting” were “effective” every quarter. *Id.* at ¶¶8, 13, 88, 97, 105, 114, 124, 136, 149, 160, 173, 185, 196, 204. The Individual Defendants, as REGI’s CEO or CFO, were responsible for, knew and had access to specific, detailed information about the control procedures that were in place and thus, should and must have known the potential for major problems from a control system that did not require high-level review and reconciliation of spreadsheets regarding the Company’s most critical data (*id.* at ¶¶25-30, 57, 210, 256-57), or provide for regular daily, weekly, or even monthly review of whether the amount of petro-diesel used matched the amount of petro-diesel required to be blended (*id.* at ¶¶60, 218, 223).

At the very least, defendants REGI, Warner, Stone and Robinson admittedly were aware of information indicating deficient internal controls by June 2020, when REGI disclosed the first of the two major blunders. The inference of scienter is

particularly strong where, as here, a serious financial reporting or accounting misstatement occurs a second time. *Freedman v. Weatherford Int’l Ltd.*, 2013 WL 5299137, at *5 (S.D.N.Y. Sept. 20, 2013) (where defendants admitted reporting errors and touted “additional reconciliations” and improved “procedures to ensure that its financial statements complied with GAAP,” scienter could be strongly inferred from the disclosure of a second major error four months later due to “the presumably intense, high-level focus on tax accounting” following the first error).

By June 2020, if not sooner, Defendants were aware that existing internal controls were inadequate to prevent major “calculation errors” and spreadsheet reconciliation failures. *Id.* at ¶¶6-7, 209-10. Yet nothing was done and defendants Warner, and Stone continued certifying that internal controls were sufficient, until February 2021, when REGI suddenly disclosed additional failures spanning three years, triggering IRS liability and a restatement, and admitted to deficient internal controls. *Id.* at ¶¶6-14, 196, 204.

Under these circumstances, the Complaint adequately pleads scienter because the “allegations permit the conclusion that [Defendants] knew about but failed to resolve meaningful control deficiencies at times when [they were] certifying that the internal controls were effective.” *Dobina v. Weatherford Int’l Ltd.*, 909 F. Supp. 2d 228, 247 (S.D.N.Y. 2012). “Courts in this District have repeatedly held that weak internal controls will support an inference of scienter.” *In re Cannavest Corp. Sec.*

Litig., 307 F. Supp. 3d 222, 246 (S.D.N.Y. 2018) (citing cases). Any contention that scienter may not be strongly inferred from a lack of adequate internal controls “loses its force in light of [the company]’s admission” that its internal controls were deficient. *In re OSG Sec. Litig.*, 12 F. Supp. 3d 622, 633 (S.D.N.Y. 2014).

B. Other Alleged Facts Strengthen the Inference of Recklessness.

Courts have recognized additional factors which support a strong inference of scienter, several of which are alleged by Plaintiff. When read holistically, as the Complaint must be (*Tellabs*, 551 U.S. at 326), these factors reinforce the need for reversal of the judgment below.

1. The Misstatements Caused Huge Losses, Were GAAP Violations, and Required a Restatement of Nearly Three Years of Financials.

The financial magnitude of the misstatements was huge, involving tens of millions of dollars, GAAP violations, and restated financials, and they arose from very basic accounting errors. As the District Court correctly stated, the “magnitude of the accounting error[s]” is a factor that supports a finding of recklessness, although not sufficient standing by itself. SPA-12. Decisions from this and other courts are in accord. *See Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir. 2000) (“we deem significant the amount of the write-off GT eventually did take [because] the magnitude of this write-off renders [defendants’ explanation] less credible”); *Orthofix*, 89 F. Supp. 3d at 619 (“[t]he Second Circuit Court of Appeals has held that the size of the purported fraud may also contribute to an inference of scienter”),

and cases cited therein; *Lexmark*, 367 F. Supp. 3d at 37-38 (“magnitude of the aftershock suggests more than a careless mistake or trivial miscalculation”); *Gauquie v. Albany Molecular Rsch., Inc.*, 2016 WL 4007591, at *3 (E.D.N.Y. July 26, 2016) (“magnitude of the alleged falsity” supports inference of scienter); *OSG*, 12 F. Supp. 3d at 633 (“magnitude and duration of the misstatements and the existence of GAAP violations—support the inference of scienter”); *In re Complete Mgmt. Inc. Sec. Litig.*, 153 F. Supp. 2d 314, 327 (S.D.N.Y. 2001) (“magnitude of the write-off is compelling evidence that defendants’ theretofore rosy projections were not entirely forthright [and] supports a strong inference of scienter”).

Just as in *Norfolk Cnty. Ret. Sys. v. Ustian*, the “accounting errors here were allegedly relatively straightforward—*e.g.*, accounts were not properly reconciled, transactions were recorded incorrectly, account balances were transferred inaccurately—and therefore easily identified by responsible corporate management.... Essentially, the errors were too basic, there were too many of them, and the bottom line discrepancies were too big ... to raise a compelling alternative inference that the errors were a result of mere incompetence.” 2009 WL 2386156, at *10 (N.D. Ill. July 28, 2009).

The inference of scienter is even stronger where, as here, the alleged misstatements resulted in GAAP violations and restated financials because a major GAAP violation or large restatement “raises questions about defendants’ credibility,

makes the press statements increasingly suspect, and ... supports a strong inference of scienter.” *Burstyn v. Worldwide Xceed Grp., Inc.*, 2002 WL 31191741, at *6 (S.D.N.Y. Sept. 30, 2002). While “GAAP violations do not independently sustain an inference of scienter, they may contribute to that inference.” *OSG*, 12 F. Supp. 3d at 633 (quoting *Varghese v. China Shenghuo Pharm. Holdings, Inc.*, 672 F. Supp. 2d 596, 608 (S.D.N.Y.2009)); see *In re Avon Sec. Litig.*, 2019 WL 6115349, at *21 (S.D.N.Y. Nov. 18, 2019) (“GAAP violations reinforce the conclusion that Plaintiffs have adequately alleged scienter”); *McIntire v. China MediaExpress Holdings, Inc.*, 927 F. Supp. 2d 105, 126 (S.D.N.Y. 2013) (“GAAP violations add to ... scienter”).

Similarly, “[w]hen a company is forced to restate its previously issued financial statements, the mere fact that the company had to make a large correction is some evidence of scienter,” particularly where, as in the present case, “the size and nature of the restatement suggests that ... there were systemic accounting abuses ... that resulted in a serious public misrepresentation of the company’s financial condition.” *In re Atlas Air Worldwide Holdings, Inc. Sec. Litig.*, 324 F. Supp. 2d 474, 488-89 (S.D.N.Y. 2004). The “size and nature of the restatement,” in concert with other allegations, “makes for a properly plead[ed] allegation of scienter.” *Peifa Xu v. Gridsum Holding Inc.*, 2020 WL 1508748, at *12 (S.D.N.Y. Mar. 30, 2020).

2. Defendants Spoke Knowledgeably About BTCs, EBITDA, and REGI's Blending Strategy and Guidelines for Biofuel Monitoring, Tracking, Risk Management and Forecasting.

Speaking knowledgeably on a topic creates an inference that the speaker knows pertinent facts about that topic. *Haw. Structural Ironworkers Pension Tr. Fund v. AMC Ent. Holdings, Inc.*, 422 F. Supp. 3d 821, 850 (S.D.N.Y. 2019) (“to speak so knowledgeably regarding” a topic, a defendant “must have educated himself regarding” that topic). “Actively communicating with the public about this issue demonstrates defendants’ sensitivity to it, and is strong circumstantial evidence that [they] were receiving some form of specific information about the subject.” *Boston Ret. Sys. v. Alexion Pharms., Inc.*, __ F. Supp. 3d __, 2021 WL 3675180, at *20 (D. Conn. Aug. 19, 2021) (finding adequate allegations of scienter based in part on CEO’s knowledgeable-sounding statements in earnings calls and SEC filings); *see Gauquie*, 2016 WL 4007591, at *2 (defendant’s consistent statements asserting that company “was focused on acquisitions with facilities that had clean regulatory records” supported inference that he knew of recklessly disregarded regulatory problems with one acquisition).

This rule supports an inference of scienter in the present case. Defendants spoke to investors repeatedly about BTCs, EBITDA, REGI’s “blending strategy,” and its guidelines for biofuel monitoring, tracking, risk management, forecasting and guidance. A-16 – A-110 at ¶¶43-48, 51-53; Add. 33. This indicates they knew the

pertinent facts on the topics on which they were speaking, or at least acted recklessly by speaking without conducting due diligence on the adequacy of REGI's internal controls over accounting and blending procedures. The need for internal controls and protocols was obvious given the importance of blending, BTCs, and EBITDA.

3. The Individual Defendants, as High Level Officers of REGI, Had a Duty to Familiarize Themselves With the Company's Core Operations and its Financial Reporting of Those Operations.

“High level corporate officers who signed SEC filings containing the company's financial statement have a duty to familiarize themselves with the facts relevant to the core operations of the company and the financial reporting of those operations.” *In re Pall Corp.*, 2009 WL 3111777, at *7-*8 (E.D.N.Y. Sept. 21, 2009) (“[E]ven if Defendants were unaware of information demonstrating that the financial statements were false.... Defendants should have familiarized themselves with the facts relevant to tax and accounting practices to ensure that the SEC filings they signed were truthful and accurate.”). Thus, particular positions in a company can give rise to a compelling inference that “[defendants] had access to [the] information given their positions.” *Aphria*, 2020 WL 5819548, at *9. As CEO or CFO, each Individual Defendant signed or had ultimate authority over the SEC filings containing inaccurate information about REGI's internal controls, BTCs, and financials. *See* A-16 – A-110 at ¶¶25-29, 55-58. Accordingly, they had a duty to familiarize themselves with the internal controls allowing the “calculation errors”

first disclosed on June 23, 2020, particularly because analysts were keyed into the Company's adjusted EBITDA. *See id.* at ¶¶55-58, 131, 134, 143, 147, 179-81. They also had a duty to understand and monitor the process for blending and tracking the B99.9 underlying the BTCs, which was vital to the Company's EBITDA. *See id.* at ¶¶103, 122, 134, 147, 171, 193-94.

Indeed, the financial reports, signed by the Individual Defendants, examined BTCs in immense detail. The 2018, 2019 and 2020 annual filings, for example, describe the BTC as the first “factor influencing our results of operations” and refer to the BTC 63, 81 and 97 times, respectively. *See* A-310 – A-607. And each quarter, Defendants reported EBITDA with and without the BTC. *See* A-16 – A-110 at ¶¶43-47. When signing filings and communicating with investors, each Individual Defendant had access to the true state of the Company's internal controls for financial reporting and internal processes for blending and tracking B99.9 for the BTCs. *Id.* at ¶¶29, 247, 256.

4. Defendants' Own False Statements Concerned REGI's Core Operations.

A company's “[c]ore operations include matters critical to the long term viability of the company.” *In re Hi-Crush Partners L.P. Sec. Litig.*, 2013 WL 6233561, at *26 (S.D.N.Y. Dec. 2, 2013). “Under the core operations theory, a court may infer that a company and its senior executives have knowledge of information concerning the core operations of a business, such as events affecting a significant

source of revenue.” *In re Aegean Marine Petroleum Network, Inc. Sec. Litig.*, 529 F. Supp. 3d 111, 174 (S.D.N.Y. 2021) (quoting *Lexmark*, 367 F. Supp. 3d at 37-38); *In re Supercom Inc. Sec. Litig.*, 2018 WL 4926442, at *31 (S.D.N.Y. Oct. 10, 2018). Under this doctrine, a defendant is “not entitled to make statements concerning the company’s financial statements and ignore reasonably available data that would have indicated that those statements were materially false or misleading.” *Aegean*, 529 F. Supp. 3d at 174 (quoting *Atlas Air*, 324 F. Supp. 2d at 491).⁴

The core operations doctrine applies here because REG’s core business was blending, tracking, and selling B99.9 and then obtaining BTCs. *See* A-16 – A-110 at ¶¶2-5, 36-40. The Individual Defendants allowed the Company to miscalculate and publish flawed metrics; amass 40,000 gallons of rogue petro-diesel; make false IRS filings; and certify that it had adequate internal controls. As these activities “affect[ed] a significant source of revenue,” indeed the BTCs were “a substantial amount of money” that “ultimately makes or breaks the [REGI]’s financial performance,” Defendants nevertheless made “statements concerning the company’s financial statements and ignore[d] reasonably available data that would

⁴ Although some doubt has been expressed as to the continuing viability of the core operations doctrine in light of PSLRA, the vast majority of courts continue to hold that, while allegations regarding core operations are not independently sufficient to raise a strong inference of scienter, they “may factor into a court’s holistic assessment of scienter allegations.” *Lexmark*, 367 F. Supp. 3d at 37. This Court has appeared to have endorsed this view, at least in dicta. *See New Orleans Emps. Ret. Sys. v. Celestica, Inc.*, 455 F. App’x 10, 14 n.3 (2d Cir. 2011).

have indicated that those statements were materially false or misleading,” *Aegean*, 529 F. Supp. 3d at 174; *see, e.g.*, A-16 – A-110 at ¶¶40, 57, 60, 64-65, 84-208. Such data included the inventory of blended biofuel defendant Warner explained REGI was “play[ing] an arbitrage with” in order to “develop[] a very substantial BTC benefit” and the blended gallons being produced which defendant Stone confirmed “know[ing] we’re sitting on a position that we track regularly that already reflects some risk management gain and that’s built into our forecasting and guidance that we provide.” A-16 – A-110 at ¶¶134, 180. The core operations doctrine thus contributes to a strong inference of scienter.

5. Demotions and Terminations Support Scienter.

On December 3, 2020, REGI announced that defendant Chad Stone had “ceased to serve as [its] principal financial officer” and was instead its “Senior Vice President, Commercial Performance.” A-16 – A-110 at ¶207. As CFO, Stone had repeatedly publicly discussed REGI’s BTC, EBITDA, and net income expectations, “blending strategy,” and guidelines for monitoring, tracking, risk management, forecasting, and guidance. *Id.* at ¶¶93, 100, 109, 118, 130-31, 142-43, 146-47, 155-56, 168, 180, 191, 194, 202. Stone “signed and/or had ultimate authority” over REGI’s SEC filings and financial press releases. *Id.* at ¶27. Stone’s demotion occurred between the September 2020 discovery of the blending problem and the February 2021 disclosure of it and the underlying deficient internal controls.

A few months thereafter, on May 18, 2021, REGI terminated its Vice President of Manufacturing Brad Albin, who had been with the Company since 2006 and whose duties included supervision of the Seneca Plant. *Id.* at ¶¶49, 225.

The “timing and circumstances” of REGI’s actions against Stone and Albin, while “not themselves sufficient, can add to a pleading of circumstantial evidence of fraud,” *Yannes*, 2021 WL 2555437, at *6, and “additional evidence of scienter.” *In re Salix Pharms., Ltd.*, 2016 WL 1629341, at *15 (S.D.N.Y. Apr. 22, 2016). Stone’s demotion and Albin’s termination, which occurred in temporal proximity to the misstatements at issue, “add some further weight to an overall inference of scienter.” *Orthofix*, 89 F. Supp. 3d at 619; *OSG*, 12 F. Supp. 3d at 633 n. 84 (collecting cases).

Viewed collectively and holistically, the above allegations and circumstances give rise to a strong inference that Defendants acted at least recklessly. They spoke knowledgeably and regularly and in great detail about blending, BTCs, and EBITDA, and repeatedly certified that REGI had adequate internal controls – even after the first of the two revelations of internal control problems. Meanwhile, they ignored obvious flaws and failed to investigate whether REGI had basic controls and protocols concerning these key matters on which its financial health depended. Thus, the decision below should be reversed.

VII. The Complaint Adequately Alleges Corporate Scienter.

If this Court agrees that Plaintiff has adequately alleged scienter as to even one of the Individual Defendants (all CEOs or CFOs of REGI), then the same is true as to REGI's scienter. *See Jackson v. Abernathy*, 960 F.3d 94, 98 (2d Cir. 2020) (the “most straightforward” way to raise a strong inference of corporate scienter is to “impute it from an individual defendant”); *In re Henry Schein, Inc. Sec. Litig.*, 2019 WL 8638851, at *22 (E.D.N.Y. Sept. 27, 2019) (“Courts routinely impute to the corporation the intent of officers and directors acting within the scope of their authority”) (quotation omitted); *In re Banco Bradesco S.A. Sec. Litig.*, 277 F. Supp. 3d 600, 667 (S.D.N.Y. 2017) (same).

Even if this Court finds the scienter allegations for every individual defendant insufficient, the allegations of corporate scienter suffice. “Where, as here, the scienter of a corporation is at issue, the plaintiff must allege ‘facts sufficient to create a strong inference either (1) that someone whose intent could be imputed to the corporation acted with the requisite scienter or (2) that the statements would have been approved by corporate officials sufficiently knowledgeable about the company to know that those statements were misleading.’” *In re VEON Ltd. Sec. Litig.*, 2017 WL 4162342, at *10 (S.D.N.Y. Sept. 19, 2017) (quoting *Loreley*, 797 F.3d at 177).

It is “possible to raise the required inference with regard to a corporate defendant without doing so with regard to a specific individual defendant.” *Id.*

Moreover, “[t]he person whose state of mind is imputed to the corporate defendant need not also be the person who made the material misstatements at issue.” *Henry Schein*, 2019 WL 8638851, at *23 n.5.

This Court has not established a test to determine how high up the corporate ladder an employee must be for his knowledge to be imputed to the company, but district courts in this circuit have found the knowledge of “management-level employees” imputable: “[t]here is no formulaic method or seniority prerequisite for employee scienter to be imputed to the corporation, but scienter by management-level employees is generally sufficient to attribute scienter to corporate defendants.” *Id.* at *22. “However, no court has defined what constitutes a ‘management-level’ employee, and judges have imputed scienter to corporate defendants from employees who hold many different positions with varying degrees of seniority.” *Thomas v. Shiloh Indus., Inc.*, 2017 WL 2937620, at *3 (S.D.N.Y. July 7, 2017).

In the present case, even assuming REGI’s CEOs and CFOs did not act with scienter (though in fact they did), someone at a reasonably high level surely knew of or at least recklessly disregarded the truth. For example, the manager of the Seneca Plant must have known that the volume in the petro-diesel tank stopped decreasing and that the monthly inventory reconciliations, being conducted by the Company’s corporate accounting team to arrive at final figures representing how much fuel had been produced and sold, were not correct. *See* A-16 – A-110 at ¶64. After all, the

corporate accountants relied on supply chain data from the plants and terminals regarding inventory levels and sales. *See id.* at ¶65. The accounting manager must have known who was and was not supposed to be reconciling spreadsheets and which “faulty BTC assumptions” staff accountants were using. The knowledge and recklessness of such non-defendant employees, acting in the course and scope of their employment duties, “create a strong inference that someone whose intent c[an] be imputed to the corporation acted with the requisite scienter.” *Teamsters Loc. 445 Freight Div. Pension Fund v. Dynex Cap. Inc.*, 531 F.3d 190, 195 (2d Cir. 2008).

REGI’s entire system of internal controls—from the top down—was fundamentally flawed, if even extant. Management billion-dollar publicly traded company must design, maintain, and ensure sufficient internal controls. *See* A-16 – A-110 at ¶¶57, 77-79. It is reckless for those internal controls to be so lacking that published guidance emanates from a single spreadsheet, presumably controlled by a low-level employee, such that material miscalculations in the spreadsheet may be broadcast to investors without cross-checking or other vetting. *See id.* at ¶¶6, 57-58, 209-10. It is reckless for management to be so detached that no one raises a red flag when the company faces a \$2 to \$12 million loss but guides to a \$20 to \$35 million gain. It is reckless for a leader in the biodiesel industry to sell over 40 million gallons of B99.9 (triggering the lucrative BTC) that is actually B100. *See id.* at ¶59. And it is reckless for such a company to continue that error over 45 months. *See id.* at ¶60.

Those facts show systemic recklessness from the top, not inadvertent or rogue mishaps. While REGI engaged in that conduct, its management touted the Company's sophistication with blending biodiesel and preparing to account for the BTC. Management also repeatedly certified the effectiveness of the Company's internal controls and the accuracy of its financials. Those statements were approved by corporate officials sufficiently knowledgeable about the Company to know that they were misleading. At a minimum, the officials approving those statements knew that the process for verifying the published guidance, the amounts of B99.9, or the IRS filings for the BTC was woefully inadequate. The allegations thus give rise to a cogent and compelling inference that the Company acted recklessly when misrepresenting material facts to investors.

CONCLUSION

For nearly three years, Defendants undisputedly and repeatedly made false statements assuring the adequacy of controls over basic accounting and tax matters, causing putative class members to incur large losses when the truth became known. Even after confirming the falsehoods the second time, defendants REGI, Warner, Stone and Howard waited six months to correct them with investors. Now they say, "too bad, we were just negligent, you don't get any compensation, you don't even get a day in court." This Court should tell Defendants they are wrong. For the reasons stated above, Plaintiff has adequately plead facts supporting a strong inference of

scienter. As such, this Court should reverse the decision below and remand the case for further proceedings.

Dated: April 12, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 29 and 32 and Circuit Rule 29.1, I certify the following:

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Circuit Rule 29.1(c) because this brief contains 13,053 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

Dated April 12, 2022

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CERTIFICATE OF SERVICE

I certify that on April 12, 2022, the foregoing document was filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit using the appellate CM/ECF system, and served on all parties or their counsel of record through the CM/ECF system.

Dated April 12, 2022

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ADDENDUM

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8-7-2019 Form 10-Q (2Q)	Add. 19
11-6-2019 Form 10-Q (3Q)	Add. 21
3-6-2020 Form 10-K (2019).....	Add. 23
5-1-2020 Form 10-Q (1Q)	Add. 26
8-5-2020 Form 10-Q (2Q)	Add. 29
11-6-2020 Form 10-Q (3Q)	Add. 31
Chart of False and/or Misleading Class Period Statements	Add. 33

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

Form 10-Q

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

For the Quarterly Period Ended September 30, 2016

OR

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

Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

26-4785427

(I.R.S. Employer
Identification No.)

416 South Bell Avenue Ames, Iowa

(Address of principal executive offices)

50010

(Zip code)

(515) 239-8000

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

As of October 31, 2016, the registrant had 38,553,413 shares of Common Stock outstanding.

change in the price of CBOT Soybean Oil would have had a negative effect on the fair value of these instruments of \$1.7 million.

Interest Rate Risk

Our weighted average interest rate on variable rate debt balances for the three months ended September 30, 2016 was 4.01% and a hypothetical increase in interest rate of 10% would not have a material effect on our annual interest expenses and consolidated financial statements.

Inflation

To date, inflation has not significantly affected our operating results, though costs for petroleum-based diesel fuel, feedstocks, construction, labor, taxes, repairs, maintenance and insurance are all subject to inflationary pressures. Inflationary pressure in the future could affect our ability to sell the biomass-based diesel we produce, maintain our production facilities adequately, build new biomass-based diesel production facilities and expand our existing facilities as well as the demand for our facility construction management and operations management services.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

In connection with the preparation of this Quarterly report, the Company, under the direction of our CEO and CFO, concluded that our disclosure controls and procedures were not effective as of March 31, 2016 due to the material weakness in internal control over financial reporting described below.

Material Weakness in Internal Control Over Financial Reporting

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis.

During the third quarter 2016 close process, the Company identified certain errors in its previously reported interim financial statements for the quarter ended March 31, 2016. The errors resulted from the Company's sales contract review control related to recognition of biomass-based diesel sales not operating effectively - resulting in an overstatement of biomass-based diesel sales and a corresponding understatement of accounts payable, deferred income taxes and tax expense for the quarters ended March 31, 2016 and June 30, 2016. This material weakness has not been remediated as of September 30, 2016, and due to this, the Company concluded that its internal control over financial reporting was not effective as of June 30, 2016 and September 30, 2016.

The deficiencies noted above could result in a misstatement of revenue and related accounts and disclosures that could be material to our financial statements; therefore, they represent a material weakness in our internal control over financial reporting.

Remediation Plan for Material Weakness in Internal Control over Financial Reporting

We have made and will continue to make improvements to our internal control over financial reporting. Management, with oversight from our Audit Committee, has identified and has begun executing actions that we believe will remediate the material weakness described above once fully implemented and operating for a sufficient period of time and have begun to take the following actions:

- The sales contract review control was further enhanced from a quarterly meeting to a periodic meeting noting, among other data, any sharing agreements regardless of having the biodiesel mixture excise tax credit in place or not, as well as expanding meeting members to include treasury and tax personnel as well as sales and accounting personnel; and

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2017

or

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

For the transition period from _____ to _____
 Commission File Number: 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

416 South Bell Avenue, Ames, Iowa

(Address of principal executive offices)

26-4785427

(I.R.S. Employer
Identification No.)

50010

(Zip Code)

Registrant's telephone number, including area code: (515) 239-8000

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

Title of each class:

Common Stock, par value \$.0001 per share

Name of each exchange on which registered:

NASDAQ Global Market

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

None

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

☐

Accelerated filer

☒

Non-accelerated filer

☐

(Do not check if a smaller reporting company)

Smaller reporting company

☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of June 30, 2017, the aggregate market value of Common Stock held by non-affiliates was \$490,235,252.

As of February 28, 2018, 38,855,313 shares of Common Stock of the registrant were issued and outstanding.

Documents Incorporated By Reference

All or a portion of Items 10 through 14 in Part III of this Form 10-K are incorporated by reference to the Registrant's definitive proxy statement on Schedule 14A, which will be filed within 120 days after the close of the fiscal year covered by this report on Form 10-K, or if the Registrant's Schedule 14A is not filed within such period, will be included in an amendment to this Report on Form 10-K which will be filed within such 120 day period.

insurance proceeds of \$19,037 for the property damages related to the events at its Geismar facility, which resulted in a total gain on involuntary conversion of \$8,010.

ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

ITEM 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15-d-15(e) under the Securities Exchange Act of 1934 as of the end of the periods covered by this report, December 31, 2017. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures are effective as of December 31, 2017.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act).

Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2017.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Deloitte & Touche LLP has audited our internal control over financial reporting as of December 31, 2017 and has issued an attestation report regarding its assessment included herein.

Changes in Internal Control over Financial Reporting

There have been no changes during our quarter ended December 31, 2017 in our internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. Other Information

None.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549
Form 10-Q

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

For the Quarterly Period Ended March 31, 2018

OR

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

Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

416 South Bell Avenue, Ames, Iowa

(Address of principal executive offices)

26-4785427

(I.R.S. Employer
Identification No.)

50010

(Zip code)

(515) 239-8000

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

(Do not check if a smaller reporting company)

Smaller reporting company ☐

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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

As of April 30, 2018, the registrant had 37,315,929 shares of Common Stock outstanding.

averaging \$0.2492 per pound during this period. Over the period from January 2014 through March 31, 2018, RIN prices (based on prices from OPIS) have ranged from a high of \$1.26 in December 2016 to a low of \$0.39 in September 2015, with sales prices averaging \$0.81 during this period.

Adverse fluctuations in feedstock prices as compared to biomass-based diesel prices result in lower profit margins and, therefore, represent unfavorable market conditions. The availability and price of feedstocks are subject to wide fluctuations due to unpredictable factors such as weather conditions during the growing season, rendering volumes, carry-over from the previous crop year and current crop year yield, governmental policies with respect to agriculture and supply and demand.

We have prepared a sensitivity analysis to estimate our exposure to market risk with respect to our sales contracts, lower-cost feedstock requirements, soybean oil requirements and the related exchange-traded contracts for the three months of 2018. Market risk is estimated as the potential loss in fair value, resulting from a hypothetical 10% adverse change in the fair value of our lower-cost feedstock and soybean oil requirements and biomass-based diesel sales. The results of this analysis, which may differ from actual results, are as follows:

	First three months of 2018 Volume (in millions)	Units	Hypothetical Adverse Change in Price	Impact on Annual Gross Profit (in millions)	Percentage Change in Gross Profit
Total Biodiesel	135.2	gallons	10%	\$ (41.4)	16.6%
Total Lower Cost Feedstocks	651.2	pounds	10%	\$ (17.2)	6.9%
Total Canola Oil	142.6	pounds	10%	\$ (5.0)	2.0%
Total Soy Oil	72.0	pounds	10%	\$ (2.4)	1.0%

We attempt to protect operating margins by entering into risk management contracts that reduce the risk of price volatility related to anticipated purchases of feedstocks, such as inedible animal fat and inedible corn oil and energy prices. We create offsetting positions by using a combination of forward physical purchases and sales contracts on feedstock and biomass-based diesel, including risk management futures contracts, swaps and options primarily on NYMEX NY Harbor ULSD and CBOT Soybean Oil; however, the extent to which we engage in risk management activities varies substantially from time to time, and from feedstock to feedstock, depending on market conditions and other factors. A 10% adverse change in the prices of NYMEX NY Harbor ULSD would have had a negative effect on the fair value of these instruments of \$21.6 million at March 31, 2018. A 10% adverse change in the price of CBOT Soybean Oil would have had a minimal negative effect on the fair value of these instruments of at March 31, 2018.

Interest Rate Risk

Our weighted average interest rate on variable rate debt balances for the nine months ended March 31, 2018 was 4.05%. A hypothetical increase in interest rate of 10% would not have a material effect on our annual interest expenses or consolidated financial statements.

Inflation

To date, inflation has not significantly affected our operating results, though costs for petroleum-based diesel fuel, feedstocks, construction, labor, taxes, repairs, maintenance and insurance are all subject to inflationary pressures. Inflationary pressure in the future could affect our ability to sell the biomass-based diesel we produce, maintain our production facilities adequately, build new biomass-based diesel production facilities and expand our existing facilities as well as the demand for our facility construction management and operations management services.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this report, March 31, 2018. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures were effective as of March 31, 2018.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of March 31, 2018. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

There have been no changes during our quarter ended March 31, 2018 in our internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Neither the Company nor any of its subsidiaries are a party to any material pending legal or governmental proceeding, nor is any of our property the subject of any material pending legal or governmental proceeding, except ordinary routine litigation arising in the ordinary course of our business and incidental to our business, none of which is expected to have a material adverse impact upon our business, financial position or results of operations.

ITEM 1A. RISK FACTORS

Our business, financial condition, results of operations and liquidity are subject to various risks and uncertainties, including those described below, and as a result, the trading price of our common stock could decline.

RISKS RELATED TO FEDERAL AND STATE INCENTIVES

Federal and state governmental requirements for the use of biofuels could be repealed, curtailed or otherwise changed, which could have a material adverse effect on our revenues, operating margins and financial condition.

The biomass-based diesel industry relies substantially on federal programs requiring the consumption of biofuels. Biomass-based diesel has historically been more expensive to produce than petroleum-based diesel fuel, and governmental programs support a market for biomass-based diesel that might not otherwise exist.

We believe the Renewable Fuel Standard Program is the most important of these government programs in the United States. Under this program, the EPA promulgated a regulation commonly known as RFS2, which became effective on July 1, 2010 and applies through 2022. RFS2 requires consumption of biomass-based diesel fuel, including biodiesel and renewable diesel, at specified volumes, known as renewable volume obligations ("RVO").

Under RFS2, the EPA is required to set the RVO annually based on a variety of considerations. Over the past several years, the EPA has set the minimum annual consumption volume for biomass-based diesel at increasing levels from 1.28 billion gallons in 2013 to 1.90 billion gallons in 2016. For 2017, the EPA set the minimum annual consumption volume at 2.00 billion gallons and has set 2.10 billion gallons as the minimum annual consumption volume for 2018 and recently proposed the same for 2019.

We believe that much of the increase in demand for our biomass-based diesel since July 2010 is attributable to, and accelerated by, the existence and implementation of RFS2. In addition, we believe that biomass-based diesel prices have received significant support from RFS2 since July 2010.

State requirements and incentives for the use of biofuels increase demand for our biomass-based diesel within such states, but we believe that such state requirements and incentives have not increased overall demand for biofuels in excess of

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549
Form 10-Q

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

For the Quarterly Period Ended June 30, 2018

OR

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

Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

416 South Bell Avenue, Ames, Iowa

(Address of principal executive offices)

26-4785427

(I.R.S. Employer
Identification No.)

50010

(Zip code)

(515) 239-8000

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

(Do not check if a smaller reporting company)

Smaller reporting company ☐

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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

As of July 31, 2018, the registrant had 37,258,737 shares of Common Stock outstanding.

through June 30, 2018, animal fat prices (based on prices from The Jacobsen Missouri River, for choice white grease) have ranged from a high of \$0.4050 per pound in May 2014 to a low of \$0.1600 per pound in December 2015, with sales prices averaging \$0.2475 per pound during this period. Over the period from January 2014 through June 30, 2018, RIN prices (based on prices from OPIS) have ranged from a high of \$1.26 in December 2016 to a low of \$0.39 in September 2015, with sales prices averaging \$0.79 during this period.

Adverse fluctuations in feedstock prices as compared to biomass-based diesel prices result in lower profit margins and, therefore, represent unfavorable market conditions. The availability and price of feedstocks are subject to wide fluctuations due to unpredictable factors such as weather conditions during the growing season, rendering volumes, carry-over from the previous crop year and current crop year yield, governmental policies with respect to agriculture and supply and demand.

We have prepared a sensitivity analysis to estimate our exposure to market risk with respect to our sales contracts, lower-cost feedstock requirements, soybean oil requirements and the related exchange-traded contracts for the first half of 2018. Market risk is estimated as the potential loss in fair value, resulting from a hypothetical 10% adverse change in the fair value of our lower-cost feedstock and soybean oil requirements and biomass-based diesel sales. The results of this analysis, which may differ from actual results, are as follows:

	First half of 2018 Volume (in millions)	Units	Hypothetical Adverse Change in Price	Impact on Annual Gross Profit (in millions)	Percentage Change in Gross Profit
Total Biodiesel	307.2	gallons	10%	\$ (94.0)	30.6%
Total Lower Cost Feedstocks	1,351.4	pounds	10%	\$ (35.6)	11.6%
Total Canola Oil	303.8	pounds	10%	\$ (10.7)	3.5%
Total Soy Oil	125.6	pounds	10%	\$ (4.1)	1.3%

We attempt to protect operating margins by entering into risk management contracts that reduce the risk of price volatility related to anticipated purchases of feedstocks, such as inedible animal fat and inedible corn oil and energy prices. We create offsetting positions by using a combination of forward physical purchases and sales contracts on feedstock and biomass-based diesel, including risk management futures contracts, swaps and options primarily on NYMEX NY Harbor ULSD and CBOT Soybean Oil; however, the extent to which we engage in risk management activities varies substantially from time to time, and from feedstock to feedstock, depending on market conditions and other factors. A 10% adverse change in the prices of NYMEX NY Harbor ULSD would have had a negative effect on the fair value of these instruments of \$22.1 million at June 30, 2018. A 10% adverse change in the price of CBOT Soybean Oil would have had a negative effect of \$5.9 million on the fair value of these instruments of at June 30, 2018.

Interest Rate Risk

Our weighted average interest rate on variable rate debt balances for the six months ended June 30, 2018 was 5.16%. A hypothetical increase in interest rate of 10% would not have a material effect on our annual interest expenses or consolidated financial statements.

Inflation

To date, inflation has not significantly affected our operating results, though costs for petroleum-based diesel fuel, feedstocks, construction, labor, taxes, repairs, maintenance and insurance are all subject to inflationary pressures. Inflationary pressure in the future could affect our ability to sell the biomass-based diesel we produce, maintain our production facilities adequately, build new biomass-based diesel production facilities and expand our existing facilities as well as the demand for our facility construction management and operations management services.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and

procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this report, June 30, 2018. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures were effective as of June 30, 2018.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of June 30, 2018. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

There have been no changes during our quarter ended June 30, 2018 in our internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Neither the Company nor any of its subsidiaries are a party to any material pending legal or governmental proceeding, nor is any of our property the subject of any material pending legal or governmental proceeding, except ordinary routine legal or governmental proceedings arising in the ordinary course of our business and incidental to our business, none of which is expected to have a material adverse impact upon our business, financial position or results of operations.

ITEM 1A. RISK FACTORS

Our business, financial condition, results of operations and liquidity are subject to various risks and uncertainties, including those described below, and as a result, the trading price of our common stock could decline.

RISKS RELATED TO FEDERAL AND STATE INCENTIVES

Federal and state governmental requirements for the use of biofuels could be repealed, curtailed or otherwise changed, which could have a material adverse effect on our revenues, operating margins and financial condition.

The biomass-based diesel industry relies substantially on federal programs requiring the consumption of biofuels. Biomass-based diesel has historically been more expensive to produce than petroleum-based diesel fuel, and governmental programs support a market for biomass-based diesel that might not otherwise exist.

We believe the Renewable Fuel Standard Program is the most important of these government programs in the United States. Under this program, the EPA promulgated a regulation commonly known as RFS2, which became effective on July 1, 2010 and applies through 2022. RFS2 requires consumption of biomass-based diesel fuel and advanced biofuels at specified volumes, known as renewable volume obligations ("RVOs").

Under RFS2, the EPA is required to set the biomass-based diesel and advanced biofuels RVOs annually based on a variety of considerations. Over the past several years, the EPA has set the minimum annual consumption volume for biomass-based diesel at increasing levels from 1.28 billion gallons in 2013 to 1.90 billion gallons in 2016. For 2017, the EPA set the minimum annual consumption volume at 2.00 billion gallons and has set 2.10 billion gallons as the minimum annual consumption volume for 2018 and 2019. The minimum annual consumption volume for advanced biofuels has also increased. In 2015, it was set at 2.88 billion RINs and increased to 4.29 billion RINs in 2018.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549
Form 10-Q

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

For the Quarterly Period Ended September 30, 2018

OR

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

Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

416 South Bell Avenue, Ames, Iowa

(Address of principal executive offices)

26-4785427

(I.R.S. Employer
Identification No.)

50010

(Zip code)

(515) 239-8000

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

As of October 31, 2018, the registrant had 37,299,704 shares of Common Stock outstanding.

biodiesel with closing sales prices averaging \$0.33 per pound, or \$2.47 per gallon. Over the period from January 2014 through September 30, 2018, animal fat prices (based on prices from The Jacobsen Missouri River, for choice white grease) have ranged from a high of \$0.41 per pound in May 2014 to a low of \$0.16 per pound in December 2015, with sales prices averaging \$0.25 per pound during this period. Over the period from January 2014 through September 30, 2018, RIN prices (based on prices from OPIS) have ranged from a high of \$1.26 in December 2016 to a low of \$0.33 in September 2018, with sales prices averaging \$0.77 during this period.

Adverse fluctuations in feedstock prices as compared to biomass-based diesel prices result in lower profit margins and, therefore, represent unfavorable market conditions. The availability and price of feedstocks are subject to wide fluctuations due to unpredictable factors such as weather conditions during the growing season, rendering volumes, carry-over from the previous crop year and current crop year yield, governmental policies with respect to agriculture and supply and demand.

We have prepared a sensitivity analysis to estimate our exposure to market risk with respect to our sales contracts, lower-cost feedstock requirements, soybean oil requirements and the related exchange-traded contracts for the first nine months of 2018. Market risk is estimated as the potential loss in fair value, resulting from a hypothetical 10% adverse change in the fair value of our lower-cost feedstock and soybean oil requirements and biomass-based diesel sales. The results of this analysis, which may differ from actual results, are as follows:

	First nine months of 2018 Volume (in millions)	Units	Hypothetical Adverse Change in Price	Impact on Annual Gross Profit (in millions)	Percentage Change in Gross Profit
Total Biodiesel	486.0	gallons	10%	\$ (148.7)	(41.5)%
Total Lower Cost Feedstocks	2,130.3	pounds	10%	\$ (55.7)	(15.53)%
Total Canola Oil	463.9	pounds	10%	\$ (16.3)	(4.5)%
Total Soy Oil	222.4	pounds	10%	\$ (6.9)	(1.9)%

We attempt to protect operating margins by entering into risk management contracts that reduce the risk of price volatility related to anticipated purchases of feedstocks, such as inedible animal fat and inedible corn oil and energy prices. We create offsetting positions by using a combination of forward physical purchases and sales contracts on feedstock and biomass-based diesel, including risk management futures contracts, swaps and options primarily on NYMEX NY Harbor ULSD and CBOT Soybean Oil; however, the extent to which we engage in risk management activities varies substantially from time to time, and from feedstock to feedstock, depending on market conditions and other factors. A 10% adverse change in the prices of NYMEX NY Harbor ULSD would have had a positive effect on the fair value of these instruments of \$20.4 million at September 30, 2018. A 10% adverse change in the price of CBOT Soybean Oil would have had a negative effect of \$7.6 million on the fair value of these instruments of at September 30, 2018. A 10% adverse change in the price of NYMEX Natural Gas would have had an immaterial impact on our gross margin at September 30, 2018.

Interest Rate Risk

Our weighted average interest rate on variable rate debt balances for the nine months ended September 30, 2018 was 5.56%. A hypothetical increase in interest rate of 10% would not have a material effect on our annual interest expenses or consolidated financial statements.

Inflation

To date, inflation has not significantly affected our operating results, though costs for petroleum-based diesel fuel, feedstocks, construction, labor, taxes, repairs, maintenance and insurance are all subject to inflationary pressures. Inflationary pressure in the future could affect our ability to sell the biomass-based diesel we produce, maintain our production facilities adequately, build new biomass-based diesel production facilities and expand our existing facilities as well as the demand for our facility construction management and operations management services.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as

appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this report, September 30, 2018. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures were effective as of September 30, 2018.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of September 30, 2018. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

There have been no changes during our quarter ended September 30, 2018 in our internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Neither the Company nor any of its subsidiaries are a party to any material pending legal or governmental proceeding, nor is any of our property the subject of any material pending legal or governmental proceeding, except ordinary routine legal or governmental proceedings arising in the ordinary course of our business and incidental to our business, none of which is expected to have a material adverse impact upon our business, financial position or results of operations.

ITEM 1A. RISK FACTORS

Our business, financial condition, results of operations and liquidity are subject to various risks and uncertainties, including those described below, and as a result, the trading price of our common stock could decline.

RISKS RELATED TO FEDERAL AND STATE INCENTIVES

Federal and state governmental requirements and incentives for the use of biofuels could be repealed, curtailed or otherwise changed, which could have a material adverse effect on our revenues, operating margins and financial condition.

The biomass-based diesel industry relies substantially on federal programs requiring the consumption of biofuels. Biomass-based diesel has historically been more expensive to produce than petroleum-based diesel fuel, and governmental programs support a market for biomass-based diesel that might not otherwise exist.

We believe the Renewable Fuel Standard Program is the most important of these government programs in the United States. Under this program, the EPA promulgated a regulation commonly known as RFS2, which became effective on July 1, 2010 and applies through 2022. RFS2 requires consumption of biomass-based diesel fuel and advanced biofuels at specified volumes, known as renewable volume obligations ("RVOs").

Under RFS2, the EPA is required to set the biomass-based diesel and advanced biofuels RVOs annually based on a variety of considerations. Over the past several years, the EPA has set the minimum annual consumption volume for biomass-based diesel at increasing levels from 1.28 billion gallons in 2013 to 1.90 billion gallons in 2016. For 2017, the EPA set the minimum annual consumption volume at 2.00 billion gallons and has set 2.10 billion gallons as the minimum annual consumption volume for 2018 and 2019. The minimum annual consumption volume for advanced biofuels has also increased. In 2015, it was set at 2.88 billion RINs and increased to 4.29 billion RINs in 2018.

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

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2018

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from _____ to _____
Commission File Number: 001-35397

RENEWABLE ENERGY GROUP, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

416 South Bell Avenue, Ames, Iowa
(Address of principal executive offices)

26-4785427
(I.R.S. Employer
Identification No.)

50010
(Zip Code)

Registrant's telephone number, including area code: (515) 239-8000
Securities registered pursuant to Section 12(b) of the Act:

Title of each class:
Common Stock, par value \$.0001 per share

Name of each exchange on which registered:
NASDAQ Global Market

Securities registered pursuant to Section 12(g) of the Act:
None
(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company", and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐

Smaller reporting company ☐ Emerging growth company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of June 30, 2018, the aggregate market value of Common Stock held by non-affiliates was \$556,864,879.

As of February 28, 2019, 37,355,193 shares of Common Stock of the registrant were issued and outstanding.

Documents Incorporated By Reference

All or a portion of Items 10 through 14 in Part III of this Form 10-K are incorporated by reference to the Registrant's definitive proxy statement on Schedule 14A, which will be filed within 120 days after the close of the fiscal year covered by this report on Form 10-K, or if the Registrant's Schedule 14A is not filed within such period, will be included in an amendment to this Report on Form 10-K which will be filed within such 120 day period.

	Three Months Ended March 31, 2017	Three Months Ended June 30, 2017	Three Months Ended September 30, 2017	Three Months Ended December 31, 2017
Revenues from continuing operations	\$ 418,361	\$ 534,602	\$ 625,732	\$ 575,960
Gross profit loss from continuing operations	17,833	31,956	14,681	19,884
Selling, general, and administrative expenses including research and development expense	23,535	23,115	26,829	22,364
Impairment of property, plant and equipment	—	1,341	—	48,532
Net operating income (loss) from continuing operations	(5,702)	7,500	(12,148)	(51,012)
Other income (expense), net	(5,328)	(37,425)	3,618	3,728
Net loss from continuing operations attributable to the Company	(12,106)	(31,884)	(8,413)	(13,876)
Net loss from discontinued operations attributable to the Company	(3,808)	(2,925)	(2,960)	(3,107)
Net loss attributable to the Company	(15,914)	(34,809)	(11,373)	(16,983)
Net loss from continuing operations attributable to common stockholders	(12,106)	(31,884)	(8,413)	(13,876)
Net loss from discontinued operations attributable to common stockholders	(3,808)	(2,925)	(2,960)	(3,107)
Net loss per share from continuing operations attributable to common stockholders - basic	(0.31)	(0.82)	(0.22)	(0.36)
Net loss per share from continuing operations attributable to common stockholders - diluted	(0.31)	(0.82)	(0.22)	(0.36)
Net loss per share from discontinued operations attributable to common stockholders - basic	(0.09)	(0.08)	(0.08)	(0.08)
Net loss per share from discontinued operations attributable to common stockholders - diluted	\$ (0.09)	\$ (0.08)	\$ (0.08)	\$ (0.08)

The results of operations for the three months ended December 31, 2017 reflect an asset impairment of \$44,649 (before tax) related to the Company's New Orleans facility as further described in Note 2 and the impact of the "H.R. 1", formerly known as the "Tax Cuts and Jobs Act" as signed into law on December 22, 2017. Refer to Note 13 for more details.

ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

ITEM 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15-d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")) as of the end of the period covered by this report, December 31, 2018. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures are effective as of December 31, 2018.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2018. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Deloitte & Touche LLP has audited our internal control over financial reporting as of December 31, 2018 and has issued an attestation report regarding its assessment included herein.

Changes in Internal Control over Financial Reporting

There have been no changes during our quarter ended December 31, 2018 in our internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. Other Information

On March 1, 2019, the Company filed with the Secretary of State of the State of Delaware two Certificates of Retirement and Cancellation to eliminate all references to Class A Common Stock and Series B Preferred Stock in the Company's certificate of incorporation. All such authorized shares of Class A Common Stock and Series B Preferred Stock were previously issued but were no longer outstanding and were retired by the board of directors of the Company. Following the filing of such certificates, the Company filed with the Secretary of State of the State of Delaware a Restated Certificate of Incorporation reflecting the elimination of all references to Class A Common Stock and Series B Preferred Stock. The Company's Restated Certificate filed as Exhibit Number 3.1 to this Form 10-K.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549
Form 10-Q

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

For the Quarterly Period Ended March 31, 2019

OR

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

For the transition period from to
Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

416 South Bell Avenue, Ames, Iowa

(Address of principal executive offices)

26-4785427

(I.R.S. Employer
Identification No.)

50010

(Zip code)

(515) 239-8000

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). YES ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

	First three months of 2019 Volume (in millions)	Units	Hypothetical Adverse Change in Price	Impact on Annual Gross Profit (in millions)	Percentage Change in Gross Profit
Total Biodiesel	162.4	gallons	10%	\$ (43.0)	(336.4)%
Total Lower Cost Feedstocks	684.1	pounds	10%	\$ (17.8)	(139.0)%
Total Canola Oil	101.3	pounds	10%	\$ (3.3)	(26.1)%
Total Soy Oil	133.2	pounds	10%	\$ (4.0)	(31.2)%

We attempt to protect operating margins by entering into risk management contracts that reduce the risk of price volatility related to anticipated purchases of feedstocks, such as inedible animal fat and inedible corn oil and energy prices. We create offsetting positions by using a combination of forward physical purchases and sales contracts on feedstock and biomass-based diesel, including risk management futures contracts, swaps and options primarily on NYMEX NY Harbor ULSD and CBOT Soybean Oil; however, the extent to which we engage in risk management activities varies substantially from time to time, and from feedstock to feedstock, depending on market conditions and other factors. A 10% adverse change in the prices of NYMEX NY Harbor ULSD would have had a positive effect on the fair value of these instruments of \$18.1 million at March 31, 2019. A 10% adverse change in the price of CBOT Soybean Oil would have had a positive effect of \$2.1 million on the fair value of these instruments of at March 31, 2019. A 10% adverse change in the price of NYMEX Natural Gas would have had an immaterial impact on our gross margin at March 31, 2019.

Interest Rate Risk

Our weighted average interest rate on variable rate debt balances for the three months ended March 31, 2019 was 4.47%. A hypothetical increase in interest rate of 10% would not have a material effect on our annual interest expenses or consolidated financial statements.

Inflation

To date, inflation has not significantly affected our operating results, though costs for petroleum-based diesel fuel, feedstocks, construction, labor, taxes, repairs, maintenance and insurance are all subject to inflationary pressures. Inflationary pressure in the future could affect our ability to sell the biomass-based diesel we produce, to maintain our production facilities adequately, to build new biomass-based diesel production facilities and to expand our existing facilities, as well as the demand for our facility construction management and operations management services.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15-d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this report, March 31, 2019. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures were effective as of March 31, 2019.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of March 31, 2019. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549
Form 10-Q

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

For the Quarterly Period Ended June 30, 2019

OR

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

For the transition period from to
Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

26-4785427

(I.R.S. Employer
Identification No.)

416 South Bell Avenue Ames Iowa

(Address of principal executive offices)

50010

(Zip code)

(515) 239-8000

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	REGI	NASDAQ Global Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

Emerging growth company ☐

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15-d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this report, June 30, 2019. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures were effective as of June 30, 2019.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of June 30, 2019. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

There have been no changes during our quarter ended June 30, 2019 in our internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION**ITEM 1. LEGAL PROCEEDINGS**

Neither the Company nor any of its subsidiaries are a party to any material pending legal or governmental proceeding, nor is any of our property the subject of any material pending legal or governmental proceeding, except ordinary routine legal or governmental proceedings arising in the ordinary course of our business and incidental to our business, none of which is expected to have a material adverse impact upon our business, financial position or results of operations.

ITEM 1A. Risk Factors

Our business, financial condition, results of operations and liquidity are subject to various risks and uncertainties, including those described below. As a result, the trading price of our common stock could decline.

RISKS RELATED TO FEDERAL AND STATE INCENTIVES

The Renewable Fuel Standard Program, a Federal law mandating the consumption of qualifying biofuels, could be repealed, curtailed or otherwise changed, which might have a material adverse effect on our revenues, operating margins and financial condition.

We and other participants in the biomass-based diesel industry rely on governmental programs requiring or incentivizing the consumption of biofuels. Biomass-based diesel has historically been more expensive to produce than petroleum-based diesel fuel and these governmental programs support a market for biomass-based diesel that might not otherwise exist.

One of the most important of these programs is the Renewable Fuel Standard ("RFS2"), a Federal law which requires that transportation fuels in the United States contain a minimum amount of renewable fuel. This program is administered by the Environmental Protection Agency ("EPA"). The EPA's authority includes setting annual minimum aggregate levels of consumption in four renewable fuel categories, including the two primary categories in which our fuel competes (biomass-based diesel and advanced biofuel). The parties obligated to comply with this renewable volume obligation ("RVO"), are petroleum refiners and petroleum fuel importers.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549
Form 10-Q

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

For the Quarterly Period Ended September 30, 2019

OR

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

For the transition period from to
Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

26-4785427

(I.R.S. Employer
Identification No.)

416 South Bell Avenue Ames Iowa

(Address of principal executive offices)

50010

(Zip code)

(515) 239-8000

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	REGI	NASDAQ Global Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

Emerging growth company ☐

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this report, September 30, 2019. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures were effective as of September 30, 2019.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of September 30, 2019. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

There have been no changes during our quarter ended September 30, 2019 in our internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION**ITEM 1. LEGAL PROCEEDINGS**

Neither the Company nor any of its subsidiaries are a party to any material pending legal or governmental proceeding, nor is any of our property the subject of any material pending legal or governmental proceeding, except ordinary routine legal or governmental proceedings arising in the ordinary course of our business and incidental to our business, none of which is expected to have a material adverse impact upon our business, financial position or results of operations.

ITEM 1A. Risk Factors

Our business, financial condition, results of operations and liquidity are subject to various risks and uncertainties, including those described below. As a result, the trading price of our common stock could decline.

RISKS RELATED TO FEDERAL AND STATE INCENTIVES

The Renewable Fuel Standard Program, a Federal law mandating the consumption of qualifying biofuels, could be repealed, curtailed or otherwise changed, which might have a material adverse effect on our revenues, operating margins and financial condition.

We and other participants in the biomass-based diesel industry rely on governmental programs requiring or incentivizing the consumption of biofuels. Biomass-based diesel has historically been more expensive to produce than petroleum-based diesel fuel and these governmental programs support a market for biomass-based diesel that might not otherwise exist.

One of the most important of these programs is the Renewable Fuel Standard ("RFS2"), a Federal law which requires that transportation fuels in the United States contain a minimum amount of renewable fuel. This program is administered by the Environmental Protection Agency ("EPA"). The EPA's authority includes setting annual minimum aggregate levels of consumption in four renewable fuel categories, including the two primary categories in which our fuel competes (biomass-

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2019
or

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

For the transition period from _____ to _____
Commission File Number: 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

26-4785427

(I.R.S. Employer
Identification No.)

416 South Bell Avenue Ames Iowa

(Address of principal executive offices)

50010

(Zip code)

Registrant's telephone number, including area code: (515) 239-8000

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	REGI	NASDAQ Global Market

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

None
(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company", and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer <input type="checkbox"/>	Accelerated filer <input checked="" type="checkbox"/>
Non-accelerated filer <input type="checkbox"/>	Smaller reporting company <input type="checkbox"/>
	Emerging growth company <input type="checkbox"/>

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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of June 30, 2019, the aggregate market value of Common Stock held by non-affiliates was \$515,008,220.

As of February 29, 2020, 38,967,079 shares of Common Stock of the registrant were issued and outstanding.

Documents Incorporated By Reference

All or a portion of Items 10 through 14 in Part III of this Form 10-K are incorporated by reference to the Registrant's definitive proxy statement on Schedule 14A, which will be filed within 120 days after the close of the fiscal year covered by this report on Form 10-K, or if the Registrant's Schedule 14A is not filed within such period, will be included in an amendment to this Report on Form 10-K which will be filed within such 120 day period.

	Three Months Ended March 31, 2018	Three Months Ended June 30, 2018	Three Months Ended September 30, 2018	Three Months Ended December 31, 2018
Revenues from continuing operations	\$ 688,002	\$ 578,900	\$ 596,324	\$ 519,761
Gross profit loss from continuing operations	249,455	57,514	51,159	61,863
Selling, general, and administrative expenses including research and development expense	32,688	24,539	21,933	27,579
Impairment of property, plant and equipment	—	—	—	879
Income from operations	216,767	32,975	29,226	33,405
Other income (expense), net	(128)	(96)	(2,900)	250
Net income from continuing operations	217,844	29,042	25,472	31,270
Net income (loss) from discontinued operations	(3,455)	4,808	(469)	(12,196)
Net income	\$ 214,389	\$ 33,850	\$ 25,003	\$ 19,074
Net income from continuing operations available to common stockholders	\$ 212,608	\$ 28,277	\$ 24,799	\$ 30,448
Net income (loss) from discontinued operations available to common stockholders	\$ (3,455)	\$ 4,681	\$ (469)	\$ (12,197)
Basic net income (loss) per share available to common stockholders:				
Continuing operations	\$ 5.48	\$ 0.76	\$ 0.67	\$ 0.82
Discontinued operations	\$ (0.09)	\$ 0.13	\$ (0.01)	\$ (0.33)
Net income per share	\$ 5.39	\$ 0.88	\$ 0.65	\$ 0.50
Diluted net income (loss) per share available to common stockholders:				
Continuing operations	\$ 5.38	\$ 0.67	\$ 0.55	\$ 0.66
Discontinued operations	\$ (0.09)	\$ 0.11	\$ (0.01)	\$ (0.33)
Net income per share	\$ 5.30	\$ 0.78	\$ 0.53	\$ 0.40

The results for the three months ended September 30, 2019 reflect an impairment related to the Company's New Boston facility's property, plant and equipment assets resulting from the closing of the plant. Refer to Note 2 for further details. The results for the three months ended December 31, 2019 reflect the full recognition in revenue the effect of the retroactive reinstatement of the 2018 and 2019 BTC. The net benefit of the BTC was \$260,850 and \$238,564 related to the business conducted in 2019 and 2018, respectively. The results for the three months ended March 31, 2018 reflected the full recognition of the effect of the 2017 BTC retroactive reinstatement of \$206,521.

ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

ITEM 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15-d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")) as of the end of the period covered by this report, December 31, 2019. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures are effective as of December 31, 2019.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2019. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Deloitte & Touche LLP has audited our internal control over financial reporting as of December 31, 2019 and has issued an attestation report regarding its assessment included herein.

Changes in Internal Control over Financial Reporting

There have been no changes during our quarter ended December 31, 2019 in our internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. Other Information

None.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-Q**

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

For the Quarterly Period Ended March 31, 2020

OR

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

For the transition period from to
Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

26-4785427

(I.R.S. Employer
Identification No.)

416 South Bell Avenue Ames Iowa

(Address of principal executive offices)

50010

(Zip code)

(515) 239-8000

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	REGI	NASDAQ Global Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

Emerging growth company ☐

our lower-cost feedstock and soybean oil requirements and biomass-based diesel sales. The results of this analysis, which may differ from actual results, are as follows:

	First three months of 2020 Volume (in millions)	Units	Hypothetical Adverse Change in Price	Impact on Gross Profit (in millions)	Percentage Change in Gross Profit
Total Biomass-based Diesel	139.8	gallons	10%	\$ (43.3)	(40.4)%
Total Lower Cost Feedstocks	748.5	pounds	10%	\$ (21.0)	(19.5)%
Total Canola Oil	117.0	pounds	10%	\$ (4.0)	(3.7)%
Total Soy Oil	110.2	pounds	10%	\$ (3.7)	(3.4)%

We attempt to protect operating margins by entering into risk management contracts that reduce the risk of price volatility related to anticipated purchases of feedstocks, such as inedible animal fat and distillers corn oil and energy prices. We create offsetting positions by using a combination of forward physical purchases and sales contracts on feedstock and biomass-based diesel, including risk management futures contracts, swaps and options primarily on NYMEX NY Harbor ULSD, CBOT Soybean Oil, and NYMEX Natural Gas; however, the extent to which we engage in risk management activities varies substantially from time to time, and from feedstock to feedstock, depending on market conditions and other factors. A 10% adverse change in the prices of NYMEX NY Harbor ULSD would have had a positive effect on the fair value of these instruments of \$6.5 million at March 31, 2020. A 10% adverse change in the price of CBOT Soybean Oil would have had a positive effect on the fair value of these instruments of \$4.6 million at March 31, 2020. A 10% adverse change in the price of NYMEX Natural Gas would have had an immaterial impact on our gross margin at March 31, 2020.

Interest Rate Risk

Our weighted average interest rate on variable rate debt balances for the three months ended March 31, 2020 was 2.84%. A hypothetical increase in interest rate of 10% would not have a material effect on our annual interest expenses or consolidated financial statements.

Inflation

To date, inflation has not significantly affected our operating results, though costs for petroleum-based diesel fuel, feedstocks, construction, labor, taxes, repairs, maintenance and insurance are all subject to inflationary pressures. Inflationary pressure in the future could affect our ability to sell the biomass-based diesel we produce, to maintain our production facilities adequately, to build new biomass-based diesel production facilities and to expand our existing facilities, as well as the demand for our facility construction management and operations management services.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15-d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this report, March 31, 2020. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures were effective as of March 31, 2020.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of March 31, 2020. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

As of January 1, 2020, the Company has implemented and is continuing to add new functionality to a new global financial consolidation and reporting system designed to more efficiently combine global results, integrate the Company's general ledger systems, add analytical capabilities, and upgrade our technology. While the Company believes that this new system and related changes to internal controls will ultimately strengthen its internal control over financial reporting, there are inherent risks in implementing a new system.

During the three months ended March 31, 2020, there were no other changes in the Company's internal controls over financial reporting that have materially affected or are reasonably likely to materially affect the Company's internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act).

PART II. OTHER INFORMATION**ITEM 1. LEGAL PROCEEDINGS**

Neither the Company nor any of its subsidiaries are a party to any material pending legal or governmental proceeding, nor is any of our property the subject of any material pending legal or governmental proceeding, except ordinary routine legal or governmental proceedings arising in the ordinary course of our business and incidental to our business, none of which is expected to have a material adverse impact upon our business, financial position or results of operations.

ITEM 1A. Risk Factors

Our business, financial condition, results of operations and liquidity are subject to various risks and uncertainties, including those described below. As a result, the trading price of our common stock could decline.

RISKS RELATED TO RENEWABLE FUEL AND LOW CARBON FUEL INCENTIVES

The Renewable Fuel Standard Program, a Federal law requiring the consumption of qualifying biofuels, could be repealed, curtailed or otherwise changed, which would have a material adverse effect on our revenues, operating margins and financial condition.

We and other participants in the biomass-based diesel industry rely on governmental programs requiring or incentivizing the consumption of biofuels. Biomass-based diesel has historically been more expensive to produce than petroleum-based diesel fuel and these governmental programs support a market for biomass-based diesel that might not otherwise exist.

One of the most important of these programs is the RFS2, a Federal law which requires that transportation fuels in the United States contain a minimum amount of renewable fuel. This program is administered by the Environmental Protection Agency ("EPA"). The EPA's authority includes setting annual minimum aggregate levels of consumption in four renewable fuel categories, including the two primary categories in which our fuel competes (biomass-based diesel and advanced biofuel). The parties obligated to comply with this RVO, are petroleum refiners and petroleum fuel importers.

The petroleum industry is strongly opposed to the RFS2 and can be expected to continue to press for changes both in the RFS2 itself and in the way that it is administered by the EPA. One key point of contention is the rate of growth in the annual RVO. The RVO for biomass-based diesel was set at steadily rising levels beginning at 1.0 billion gallons in 2012 and increasing to 2.00 billion gallons in 2017. However, growth in the RVO was constrained from 2017 through 2019, as the biomass-based diesel RVO increased by only 100,000 gallons from 2.00 billion to 2.10 billion gallons while the advanced biofuel RVO increased from 4.28 billion gallons to 4.92 billion gallons. For 2020 and 2021, the EPA set the biomass-based diesel RVO at 2.43 billion gallons. The 2020 advanced biofuel RVO has been set at 5.04 billion gallons which represents zero growth in the advanced biofuels category after taking into account the increase in the cellulosic volumes. We believe that growth in the annual RVOs strongly influences our ability to grow our business and supports the price of our fuel through the RINs. The EPA's future decisions regarding the RVO will significantly influence our revenues and profit margins.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549
Form 10-Q

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

For the Quarterly Period Ended June 30, 2020

OR

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

For the transition period from to
Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of other jurisdiction of
incorporation or organization)

26-4785427

(I.R.S. Employer
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(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	REGI	NASDAQ Global Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

Emerging growth company ☐

ITEM 4. CONTROLS AND PROCEDURES**Evaluation of Disclosure Controls and Procedures**

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this report, June 30, 2020. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures were effective as of June 30, 2020.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of June 30, 2020. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

Since January 1, 2020, the Company has implemented a new global financial consolidation and reporting system designed to more efficiently combine global results, integrate the Company's general ledger systems, add analytical capabilities, and upgrade our technology. While the Company believes that this new system and related changes to internal controls will ultimately strengthen its internal control over financial reporting, there are inherent risks in implementing a new system.

During the six months ended June 30, 2020, there were no other changes in the Company's internal controls over financial reporting that have materially affected or are reasonably likely to materially affect the Company's internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act).

PART II. OTHER INFORMATION**ITEM 1. LEGAL PROCEEDINGS**

Neither the Company nor any of its subsidiaries are a party to any material pending legal or governmental proceeding, nor is any of our property the subject of any material pending legal or governmental proceeding, except ordinary routine legal or governmental proceedings arising in the ordinary course of our business and incidental to our business, none of which is expected to have a material adverse impact upon our business, financial position or results of operations.

ITEM 1A. Risk Factors

Our business, financial condition, results of operations and liquidity are subject to various risks and uncertainties, including those described below. As a result, the trading price of our common stock could decline.

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

Form 10-Q

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

For the Quarterly Period Ended September 30, 2020

OR

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

For the transition period from to
Commission File Number 001-35397

RENEWABLE ENERGY GROUP, INC.

(Exact name of registrant as specified in its charter)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$.0001 per share	REGI	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

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. ☐

positive effect on the fair value of these instruments of \$1.7 million at September 30, 2020. A 10% adverse change in the price of NYMEX Natural Gas would have had an immaterial impact on our gross margin at September 30, 2020.

Interest Rate Risk

Our weighted average interest rate on variable rate debt balances for the nine months ended September 30, 2020 was 2.41%. A hypothetical increase in interest rate of 10% would not have a material effect on our annual interest expenses or consolidated financial statements.

Inflation

To date, inflation has not significantly affected our operating results, though costs for petroleum-based diesel fuel, feedstocks, construction, labor, taxes, repairs, maintenance and insurance are all subject to inflationary pressures. Inflationary pressure in the future could affect our ability to sell the biomass-based diesel we produce, to maintain our production facilities adequately, to build new biomass-based diesel production facilities and to expand our existing facilities, as well as the demand for our facility construction management and operations management services.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, under the supervision of and with the participation of the CEO and CFO, performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15-d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this report, September 30, 2020. In connection with our evaluation of disclosure controls and procedures, we have concluded that our disclosure controls and procedures were effective as of September 30, 2020.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of September 30, 2020. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

Since January 1, 2020, the Company has implemented a new global financial consolidation and reporting system designed to more efficiently combine global results, integrate the Company's general ledger systems, add analytical capabilities, and upgrade our technology. While the Company believes that this new system and related changes to internal controls will ultimately strengthen its internal control over financial reporting, there are inherent risks in implementing a new system.

During the nine months ended September 30, 2020, there were no other changes in the Company's internal controls over financial reporting that have materially affected or are reasonably likely to materially affect the Company's internal control over financial reporting (as defined in Rules 13a-15(f) under the Exchange Act).

PART II. OTHER INFORMATION

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	¶
3/8/18	Howard, Robinson, REGI	Earnings call	<i>With the retroactive reinstatement of the BTC for 2018, we are forecasting \$60 million to \$75 million for adjusted EBITDA for the first quarter.</i>	84
3/8/18	Howard, Robinson, REGI	Earnings call	<i>We are ... focused on capturing additional margin through blended fuel sales by expanding our downstream distribution strategy. We highlighted terminal expansion at our Analyst Day in June and in 2017 we added 10 new terminals. We now have a network of 46 terminals.</i>	86
3/10/18	Howard, Stone, REGI	10-K	REGI's "disclosure controls and procedures are effective as of December 31, 2017" and "internal control over financial reporting was effective as of December 31, 2017."	88
5/3/18	Stone, REGI	Press release	<ul style="list-style-type: none"> • Revenues of \$689.3 million, inclusive of the BTC, up 65% y/y • 135 million gallons sold, up 11% y/y • 106 million gallons produced, up 10% y/y • <i>Net income of \$209.2 million or \$5.30 per share, inclusive of the BTC, up from net loss of \$15.9 million y/y, or \$(0.41) per share</i> • Adjusted net income of \$4.7 million or \$0.12 per share, up from an Adjusted net loss of \$13.6 million, excluding the BTC for 2017, y/y, or \$(0.35) per share • Adjusted EBITDA of \$17.5 million, up from \$0.6 million y/y excluding the BTC for 2017 	90
5/3/18	Stone, REGI	Press release	[I]f the BTC is retroactively reinstated for 2018 on the same terms as in 2017, <i>REG's Adjusted net income and Adjusted EBITDA for business conducted in the quarter ended March 31, 2018 would each increase by approximately \$42.5 million.</i>	91
5/3/18	Howard, Robinson, REGI	Earnings call	<p><i>GAAP net income of \$209 million, or \$5.30 earnings per share, represent[s] first quarter recognition of the biodiesel excise tax credit for 2017. Our adjusted net income was \$4.7 million, and our adjusted EBITDA was \$17.5 million for the first quarter. Adjusted net income and adjusted EBITDA reflect the allocation of the BTC benefit based on when the gallons were sold in 2017 and 2018, providing a better representation of the first quarter 2018 performance.</i></p> <p style="text-align: center;">* * *</p> <p>[If] "BTC is retroactively reinstated later this year, as expected, we estimate <i>the net BTC benefit earned this quarter would be around \$42.5 million. Adjusted EBITDA of \$60 million for the first quarter, assuming the BTC reinstatement</i>, continues to support, what we see as a step change in our earnings power.</p>	92

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	¶
5/3/18	Stone, Robinson, REGI	Earnings call	<i>[T]here is approximately \$42.5 million net upside to adjusted EBITDA as the BTC has reinstated for 2018 for a total of first quarter adjusted EBITDA of \$60 million.</i> Let me try to give you a simple explanation of how we allocated the 2017 impact [of the reinstatement]. For adjusted net income and adjusted EBITDA, we allocate the benefit to the quarters when the gallons were sold. So those metrics are comparable with additional adjustments, without any additional adjustments.	93
5/3/18	Howard, Robinson, REGI	Earnings call	[W]e ... are forecasting \$30 million to \$45 million for adjusted EBITDA without the 2018 BTC. Assuming retroactive BTC reinstatement, our adjusted EBITDA would be in the range of \$80 million to \$95 million. Adjusted EBITDA for the first half, without BTC, should be in the range of \$47 million to \$62 million. And with the retroactive reinstatement of the BTC, it is approximately \$150 million, which demonstrates our substantial earnings power. With a BTC reinstatement for 2018, we expect our 2018 performance to reinforce this step change we saw in 2017 and could ultimately exceed the record levels we achieved in 2017. This estimate is based on actual performance through April, existing forward contracts expected to be fulfilled in existing spot margins through the end of the quarter. Any changes of the price of diesel, RINs or LCFS [California Low Carbon Fuel Standard] credits through the end of the quarter would be expected to affect the estimated results.	95
5/4/18	Howard, Stone, REGI	10-Q	REGI's "disclosure controls and procedures were effective as of March 31, 2018" and "internal control over financial reporting was effective as of March 31, 2018."	97
8/6/18	Stone, REGI	Press release	<ul style="list-style-type: none"> • Net income of \$33.0 million or \$0.78 per diluted share, up from net loss of \$34.8 million, or \$0.90 per diluted share y/y • Adjusted net income of \$23.5 million or \$0.56 per share, up from \$4.5 million, or \$0.12 per share excluding allocation of the 2017 BTC y/y • Adjusted EBITDA of \$42.3 million, up from \$19.7 million y/y, excluding allocation of the 2017 BTC • Revenues of \$580.2 million, up 8% y/y 	99
8/6/18	Stone, REGI	Earnings call	Including an allocation for the estimated net benefit of the BTC and assuming a retroactive reinstatement for the full year, our adjusted EBITDA would be nearly \$170 million for the first half of the year as reflected on slide 10.	100

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
8/6/18	Howard, Robinson, REGI	Earnings call	<i>If the BTC is reinstated retroactively as expected, we estimate adjusted EBITDA for the third would increase by approximately \$60 million, bringing the total to \$95 million to \$110 million.</i> Given our first half performance, and our expectations for a strong third quarter, we are well under way to another record year. <i>This estimate is based on the actual performance through the end of July, takes into account existing forward contracts expected to be fulfilled in existing spot margins to the end of the quarter. Any changes to the price of diesel, feedstocks, RIMs or LCFS credits through the end of the quarter would be expected to affect the estimated results.</i>	101
8/6/18	Howard, Robinson, REGI	Earnings call	Analyst: “[I]nvestors often ask about ... your plan for blending more of your own product to capture greater share of RIN, greater benefit of the environmental to compliance that biodiesel, renewable diesel brings to the market,” what are “your rollout plans for the rest of the year as far as your own blending terminals, where you stand on capacity today and where you think you can go over the next couple of years?” Howard: “[W]e’re really focused on ramping up those [blending terminal] projects. We’ve added another two terminals this year after adding 10 last year. . . . I think we’ve added 5 fleets more on this, and when we add fleet customers, that means <i>we’re selling them a blended, complete blended product, so that continues to move forward.</i> ”	103
8/7/18	Howard, Stone, REGI	10-Q	REGI’s “ <i>disclosure controls and procedures were effective as of June 30, 2018</i> ” and “ <i>internal control over financial reporting was effective as of June 30, 2018.</i> ”	105
11/6/18	Stone, REGI	Press release	<ul style="list-style-type: none"> • <i>Net income of \$24.3 million or \$0.53 per diluted share, up from net loss of \$11.4 million, or \$0.29 per diluted share y/y</i> • Adjusted net income of \$19.8 million or \$0.43 per share, up from Adjusted net loss of \$15.1 million, or \$0.39 per diluted share excluding allocation of the federal Biodiesel Mixture Excise Tax Credit (“BTC”) for 2017 y/y • Adjusted EBITDA of \$34.6 million, up from negative \$1.5 million y/y, excluding allocation of the 2017 BTC • Revenues of \$597.8 million, down 5% y/y 	107

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
11/6/18	Howard, REGI	Earnings call	Should the BTC be retroactively reinstated for the full-year and on the same terms, which we continue to expect, <i>we estimate that we would capture an additional \$70 million for business conducted in the third quarter and \$179 million for the first nine months. This would increase net income and adjusted EBITDA by equivalent amounts.</i>	108
11/6/18	Stone, Robinson, REGI	Earnings call	<i>The operating income improvement resulted in a similar improvement in net income as well. Net income was a bit higher than operating income due to a small contribution from other income and expense.</i>	109
11/6/18	Howard, Robinson, REGI	Earnings call	<i>We continue to grow our list of major trucking fleets and end-user customers where we supply a range of cleaner burning blends of renewable fuel. Our downstream assets now encompass 41 terminals, serving 23 fleets and end users.</i>	111
11/6/18	Howard, Robinson, REGI	Earnings call	<i>[B]lended fuels continue to grow year-on-year. We've seen significant increase 2018 versus 2017. A lot of our national fleet customers are now starting to purchase that blended product in California.</i>	112
11/7/18	Howard, Stone, REGI	10-Q	REGI's "disclosure controls and procedures were effective as of September 30, 2018" and "internal control over financial reporting was effective as of September 30, 2018."	114
3/5/19	Stone, REGI	Press release	<p>Fourth Quarter 2018 Highlights:</p> <ul style="list-style-type: none"> • <i>Net income from continuing operations of \$30.4 million, or \$0.66 per diluted share, compared to a net loss from continuing operations of \$13.9 million, or \$0.36 per diluted share y/y</i> • Net loss from discontinued operations of \$12.2 million, or \$0.33 per diluted share, compared to net loss from discontinued operations of \$3.1 million, or \$0.08 per diluted share y/y • Adjusted EBITDA of \$44.5 million, up from \$6.5 million y/y, excluding allocation of the 2017 Biodiesel Mixture Excise Tax Credit (BTC) • Revenues of \$519.8 million • 163.2 million gallons of fuel sold <p>Full Year 2018 Highlights:</p> <ul style="list-style-type: none"> • <i>Net income from continuing operations of \$295.8 million, or \$6.78 per diluted share, compared to a net loss from continuing operations of \$66.3 million, or \$1.71 per diluted share y/y</i> 	116

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
			<ul style="list-style-type: none"> • Net loss from discontinued operations of \$11.3 million, or \$0.30 per diluted share, compared to net loss from discontinued operations of \$12.8 million, or \$0.33 per diluted share y/y • Adjusted EBITDA of \$138.9 million, up from \$25.3 million y/y, excluding allocation of the 2017 BTC • Revenues of \$2.4 billion • 649.2 million gallons of fuel sold 	117
3/5/19	Warner, Robinson, REGI	Earnings call	[W]e continue to be focused on getting the BTC is retroactively reinstated for 2018 and longer. Assuming this is achieved ... we estimate <i>our adjusted EBITDA for 2018 would increase by approximately \$237 million to almost \$376 million.</i>	117
3/5/19	Stone, Robinson, REGI	Earnings call	We held operating expense growth essentially in line with revenue growth which resulted in <i>strong net income and adjusted EBITDA</i> ” and that “ <i>our 2018 cash flows do not yet include the estimated net benefit of approximately \$237 million related to the retroactive reinstatement of the 2018 BTC.</i>	118
3/5/19	Warner, Robinson, REGI	Earnings call	<p><i>[W]e’re a great production Company. Our scale has real competitive advantage. We have built a very powerful multi-plant cross-functional system that helps us optimize ... our fleet operations.</i></p> <p>In 2018, we produced 502 million gallons of low carbon fuel, that is an 11% increase year-over-year. <i>We accomplished this double-digit increase with modest capital investment in our core biorefineries. Our fleet continue to increase production from existing assets by focusing on selected debottlenecking, grade operations and continuous improvement.</i> Our plant set 92 weekly monthly, quarterly, and annual production records in 2018.</p> <p style="text-align: center;">* * *</p> <p>In summary, <i>we are the leading U.S. advanced biofuel refinery</i> featuring an outstanding team with great assets which have delivered a robust performance and <i>sets us up well for ongoing success.</i></p>	120
3/5/19	Warner, Robinson, REGI	Earnings call	With regard to “predictability well things can always change based on market conditions or other factors [but] <i>we have a good level of confidence in our ability to estimate the controllable operating factors of gallons produced and sold.</i> In contrast, we have a bigger challenge when we forecast margins.	121

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
3/5/19	Warner, Robinson, REGI	Earnings call	Analyst: “So you guys are obviously doing the right thing growing your distribution base where you’re able to hold on to the full value of the BTC Can you quantify for us approximately what percentage of your gallons you do actually achieve this full monetization of the compliance value?” Warner: “[H]aving the terminals actually what it’s doing is giving us superior access to customers we may not have had access to before. And it also <i>enables us in many cases to provide blends that we couldn’t have provided before, which can result in either additional sales of our products or additional sales of third-party products that we’ve purchased and then blend in.</i> ”	122
3/7/19	Howard, Warner, Stone, REGI	10-K	REGI’s “disclosure controls and procedures are effective as of December 31, 2018” and “internal control over financial reporting was effective as of December 31, 2018.”	124
3/7/19	Howard, Warner, Stone, REGI	10-K	The modification or failure to reinstate the BTC would have a material adverse effect on our financial results. As of December 31, 2018, we estimate that <i>if the BTC is reinstated on the same terms as in 2017, our Adjusted EBITDA for business conducted in the year ended December 31, 2018 would increase by approximately \$237 million.</i>	126
5/2/19	Stone, REGI	Press release	<ul style="list-style-type: none"> • Revenues of \$478.2 million • Net loss from continuing operations of \$41.4 million, or \$1.11 per diluted share • Net loss from discontinued operations of \$2.0 million, or \$0.05 per diluted share • Adjusted EBITDA of negative \$27.4 million, excluding the potential benefit of a retroactive reinstatement of the federal Biodiesel Mixture Excise Tax Credit (BTC) 	128
5/2/19	Warner, Robinson, REGI	Earnings call	<i>We estimate our adjusted EBITDA would increase by \$55 million for business conducted in the first quarter if the incentive is reinstated</i> on the same terms. We continue to believe that the BTC will be reinstated in 2019.	129
5/2/19	Stone, Robinson, REGI	Earnings call	Our adjusted EBITDA for the first quarter was negative \$27 million pre-BTCs. <i>If the BTC is reinstated, the adjusted EBITDA would be a positive \$28 million. The net benefit of a retroactive reinstatement of the BTC would result in an increase in our adjusted EBITDA of \$55 million and \$43 million for the respective first quarters for 2019 and 2018.</i>	130

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	¶
5/2/19	Stone, Robinson, REGI	Earnings call	Analyst: “Can you remind us what the cash value would be for REGI if that was reinstated tomorrow? What would you apply for from the IRS then that would show up on your balance sheet?” Stone: “So, the 2018 amount of the net benefit to the BTC is \$237 million and the net benefit for the first quarter is \$55 million. So, in total, that’s \$292 million.” Analyst: “But the one-time cash payment from the IRS would be a \$237 million cash payment for 2018. Is that correct? And then, everything this year would be additive?” Stone: “Yes, that’s correct. Net benefit.”	131
5/2/19	Warner, Robinson, REGI	Earnings call	One area of growth that <i>we continue to focus on is operational excellence and optimization</i> . As I noted, the 117 million gallons we produced was up 10% and is a record for first quarter, with five of our plants establishing new production records. This is an exceptional result, given that <i>we had to temporarily reduce production at some of our plants due to weather and poor margins</i> . *** Soon, we will open <i>our first-ever REG cardlock station, which is adjacent to the Seneca biorefinery</i> . This will be an automated, 24/7 retail fueling station which allows any customer to obtain their fuel directly from us. Our station <i>will offer biodiesel blends produced at our local plant</i> . This location allows us to serve our customers directly and enables us to refine our approach to further expand this channel. *** Finally, our initiative to offer differentiated blends of renewable diesel and biodiesel products continues to gain traction.... <i>We sold 11 million gallons of premium blends of renewable diesel and biodiesel in the quarter</i> , a rapid expansion over the first quarter of 2018.	133
5/2/19	Warner, Robinson, REGI	Earnings call	[W]e continue to focus on underlying performance because we know the volume production is getting us a positive contribution margin in the winter months ... We’ve been using our production capacity to build inventory and basically play an arbitrage with the lower feedstock prices that we tend to experience in the winter and the higher product margins that we get in the summer time. So, that enables us to take advantage of that increased production. And, of course, <i>we are developing a very substantial BTC benefit as we’re doing that</i> .	134

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
5/3/19	Warner, Stone, REGI	10-Q	REGI's "disclosure controls and procedures were effective as of March 31, 2019" and "internal control over financial reporting was effective as of March 31, 2019."	136
5/3/19	Warner, Stone, REGI	10-Q	As of March 31, 2019 and 2018, we estimate that <i>if the BTC is reinstated on the same terms as in 2017, our Adjusted EBITDA for business conducted in the periods would increase by approximately \$55 million and \$43 million for the quarters ending March 31, 2019 and March 31, 2018, respectively.</i>	138
8/6/19	Stone, Robinson, REGI	Press release	<ul style="list-style-type: none"> • Revenues of \$560.6 million • Net loss from continuing operations of \$57.6 million, or \$1.52 per diluted share • Adjusted EBITDA of negative \$42.3 million • <i>Estimated net benefit of potential reinstatement of the federal [BTC] of \$81.0 million for the second quarter 2019, \$136.0 million for the six months ended June 30, 2019 and \$373.0 million cumulatively for 2018 and the first six months of 2019</i> 	140
8/6/19	Warner, Robinson, REGI	Earnings call	<p>In keeping with the trend[] we have experienced on BTC sharing, we estimate that <i>third quarter adjusted EBITDA would be approximately \$80 million higher if the BTC were reinstated</i> on term similar to past years.</p> <p><i>This estimate for the third quarter is based on actual performance through last week and takes into account existing forward contracts expected to be fulfilled, and existing spot margin through the end of the quarter. Any changes to the ULSD prices, margins, RINs or LCFS credit values, or a level of market volatility through the end of the quarter, could affect actual results.</i></p>	141
8/6/19	Stone, Robinson, REGI	Earnings call	<p><i>Our actual [adjusted EBITDA] result was negative \$42 million.</i> As CJ mentioned, this before BTC result is lower than expected because we took on a greater than historical portion of the expected BTC value this quarter.</p> <p><i>Our estimated BTC benefit was \$81 million compared to our guidance estimate of \$63 million.</i> If we add adjusted EBITDA and expected BTC benefit together in both the guidance and the result, we would have been within the lower end of our guidance range. Using the guidance midpoint, we were off by \$25 million due to assumptions that did not materialize or that changed. The largest item was the field environment related to the BTC sharing resulting in a lower biodiesel average selling price in higher estimated net BTC benefit for us. The drop in biodiesel average selling price impacted our results negatively versus guidance by \$19 million.</p>	142

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	¶
8/6/19	Stone, Robinson, REGI	Earnings call	Analyst: “[T]he changes in BTC expectations over the quarter, \$63 million to \$81 million, seems like there was a fairly significant change in sentiment among the buyers of your biofuel. My back of the envelope math is somewhere between 55 million and 60 million gallons was moved to where – you’re the beneficiary directly of the reinstatement, and as you said, to a greater degree. ... [I]s there potential for more of the product that’s sold to – to move into this more favorable, longer-term BTC arrangement, but something that obviously pinches the EBITDA on the short-term?” Stone: “[Y]es, <i>what we saw during the quarter was \$18 million more of BTC upside to us than we would have expected based on our traditional relationship</i> . And I think it was an evolution of customer risk appetite. You think of the 20 months of – some of our customers have very large exposures to the BTC and their offers on the table may be more leaning towards us retaining the net benefit upside. ... [T]he underlying theme really shows through in these numbers is that they have enough exposure in some cases and they don’t want to extend that.”	143
8/6/19	Warner, Robinson, REGI	Earnings call	In our first quarter earnings call, I mentioned we would be opening our first REG branded cardlock station to drive higher blends of biodiesel and enhance margins. We opened the Seneca cardlock fueling station on July 17 and are pleased with the <i>early progress there as well as the future profit opportunity for REG in selling fueled directly to end users</i> . * * * We believe <i>our ability to blend biodiesel with renewable diesel is a real differentiator for REG and uniquely positions us with scale in both products</i> . <i>We did have substantial growth in the resale of petroleum based diesel due to more blending</i> as we expand our downstream distribution network.	145
8/6/19	Stone, Robinson, REGI	Earnings call	Analyst: “On the basis that BTC has not extended our renewed, what’s your operational plan? I mean, obviously you can’t be producing business at a negative gross margin. So what are you guys operationally looking to do?” Stone: “You know, <i>it’s the – monitoring plant by plant</i> You have, you know, positioning our balance sheet to weather this storm. We’ve slowed down capital expenditures too from our original operating plan and just watching margins at plants	146
8/6/19	Stone, Robinson, REGI	Earnings call	Analyst: “On the basis that BTC has not extended our renewed, what’s your operational plan? I mean, obviously you can’t be producing business at a negative gross margin. So what are you guys operationally looking to do?” Stone: “You know, <i>it’s the – monitoring plant by plant</i> You have, you know, positioning our balance sheet to weather this storm. We’ve slowed down capital expenditures too from our original operating plan and just watching margins at plants	147

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT																	
			<p>all the time. I mean, we've been through this several times before, we know the operating plan for what to do when the BTC is not in place and what we can control are those types of things and expanding our working capital line of credit, looking at what we did with debt, paying down debt, we're at our lowest debt to capital ratio of 15% in the last five years.</p> <p>And then the other <i>things we can control are</i>, things like getting downstream, moving downstream, <i>selling blended, the entire blend, blend fuels, the Carlock at Seneca and those types of things. So that's what we can do to control our destiny and we know how to operate through times when the BTC has lapsed."</i></p>	¶																
8/7/19	Warner, Stone, REGI	10-Q	REGI's "disclosure controls and procedures were effective as of June 30, 2019" and "internal control over financial reporting was effective as of June 30, 2019."	149																
8/7/19	Warner, Stone, REGI	10-Q	<p>For the three and six months ended June 30, 2019 and for the year ended December 31, 2018, we estimate that <i>if the BTC is reinstated on the same terms as in 2017, the effect on our Adjusted EBITDA would be as follows:</i></p> <table><tr><th></th><th>Three months ended June 30, 2019</th><th>Six months ended June 30, 2019</th><th>Twelve months ended December 31, 2018</th></tr><tr><td>Adjusted EBITDA without BTC</td><td>\$ (42,337)</td><td>\$ (69,697)</td><td>\$ 151,981</td></tr><tr><td>Estimated net benefit if BTC is reinstated</td><td>81,000</td><td>136,000</td><td>237,000</td></tr><tr><td>Estimated Adjusted EBITDA if BTC is reinstated</td><td>\$ 38,663</td><td>\$ 66,303</td><td>\$ 388,981</td></tr></table>		Three months ended June 30, 2019	Six months ended June 30, 2019	Twelve months ended December 31, 2018	Adjusted EBITDA without BTC	\$ (42,337)	\$ (69,697)	\$ 151,981	Estimated net benefit if BTC is reinstated	81,000	136,000	237,000	Estimated Adjusted EBITDA if BTC is reinstated	\$ 38,663	\$ 66,303	\$ 388,981	151
	Three months ended June 30, 2019	Six months ended June 30, 2019	Twelve months ended December 31, 2018																	
Adjusted EBITDA without BTC	\$ (42,337)	\$ (69,697)	\$ 151,981																	
Estimated net benefit if BTC is reinstated	81,000	136,000	237,000																	
Estimated Adjusted EBITDA if BTC is reinstated	\$ 38,663	\$ 66,303	\$ 388,981																	
11/5/19	Stone, REGI	Press release	<ul style="list-style-type: none">• Revenues of \$584.4 million• Net loss from continuing operations of \$13.8 million, or \$0.35 per diluted share, inclusive of an \$11.1 million impairment charge related to the New Boston plant closure• Adjusted EBITDA of \$10.6 million• <i>Estimated net benefit of potential reinstatement of the federal Biodiesel Mixture Excise Tax Credit (BTC) of \$77.0 million for the third quarter 2019, \$213.0 million for the nine months ended September 30, 2019 and \$450.0 million cumulatively for 2018 and the first nine months of 2019</i>	153																
11/5/19	Warner, Robinson, REGI	Earnings call	<i>[O]ur adjusted EBITDA was \$11 million. When including our estimated net benefit from a retroactive BTC reinstatement, our adjusted EBITDA would have been \$88 million.</i>	154																

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	¶
11/5/19	Stone, Robinson, REGI	Earnings call	If the BTC is reinstated on the same terms as before, <i>we estimate the additional net benefit to our adjusted EBITDA would be \$77 million. Through September of this year the 2019 estimated net benefit of a BTC reinstatement is \$213 million. In the cumulative estimated total for 2018 and nine months ended 2019 is \$450 million.</i>	155
11/5/19	Stone, Robinson, REGI	Earnings call	We should also touch on some off balance sheet items because they're very important to understanding our current financial position. <i>Our estimated BTC net benefit contingent on the credit being reinstated is now up to \$450 million cumulatively</i> , as I mentioned before.	156
11/5/19	Warner, Robinson, REGI	Earnings call	[W]e maintained ongoing safe and efficient operations, <i>delivered high quality products to our customers</i> , and continue to pull through improvements to underlying performance that are serving to reduce our dependence upon the BTC. <p style="text-align: center;">* * *</p> <i>Petroleum diesel sales, which are driven by our initiative to increase gallons blended with biodiesel, were also up.</i> <p style="text-align: center;">* * *</p> <p>The downstream strategy is focused on three important objectives; margin expansion across the value chain, <i>realization of higher biodiesel values through blends of biodiesel into petroleum diesel and renewable diesel</i>, and increased demand for our biodiesel, via sales of B100 to end consumers. We believe these initiatives position us to expand margin and diversified sources of profitability, to enable us to manage through a wide variety of market conditions and increase shareholder value.</p> <p style="text-align: center;">***</p> <p>Blending biodiesel with renewable diesel offers a unique substitute or complement to petroleum diesel.... <i>Our biodiesel and petroleum blends are also accelerating.</i></p> <p>For retail sales, we continue to evaluate our first automated fuel station, otherwise known as a cardlock, pilot at our Seneca plant, which we opened in July. ... <i>Early indications are showing promising unit economics.</i></p>	158
11/6/19	Warner, Stone, REGI	10-Q	REGI's " <i>disclosure controls and procedures were effective as of September 30, 2019</i> " and " <i>internal control over financial reporting was effective as of September 30, 2019.</i> "	160

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT																	
11/6/19	Warner, Stone, REGI	10-Q	<p>For the three and nine months ended September 30, 2019 and for the year ended December 31, 2018, we estimate that <i>if the BTC is reinstated on the same terms as in 2017, the effect on our Adjusted EBITDA would be as follows:</i></p> <table><tr><th></th><th>Three months ended September 30, 2019</th><th>Nine months ended September 30, 2019</th><th>Twelve months ended December 31, 2018</th></tr><tr><td>Adjusted EBITDA without BTC</td><td>\$ 10,622</td><td>\$ (59,074)</td><td>\$ 149,737</td></tr><tr><td>Estimated net benefit if BTC is reinstated</td><td>77,000</td><td>213,000</td><td>237,000</td></tr><tr><td>Estimated Adjusted EBITDA if BTC is reinstated</td><td>\$ 87,622</td><td>\$ 153,926</td><td>\$ 386,737</td></tr></table>		Three months ended September 30, 2019	Nine months ended September 30, 2019	Twelve months ended December 31, 2018	Adjusted EBITDA without BTC	\$ 10,622	\$ (59,074)	\$ 149,737	Estimated net benefit if BTC is reinstated	77,000	213,000	237,000	Estimated Adjusted EBITDA if BTC is reinstated	\$ 87,622	\$ 153,926	\$ 386,737	162
	Three months ended September 30, 2019	Nine months ended September 30, 2019	Twelve months ended December 31, 2018																	
Adjusted EBITDA without BTC	\$ 10,622	\$ (59,074)	\$ 149,737																	
Estimated net benefit if BTC is reinstated	77,000	213,000	237,000																	
Estimated Adjusted EBITDA if BTC is reinstated	\$ 87,622	\$ 153,926	\$ 386,737																	
12/27/19	Stone, REGI	Press release	<p><i>With respect to the business of Renewable Energy Group, Inc. (the “Company”) conducted in 2018 and in the first nine months of 2019, the amount of the retroactive credit is estimated to result in an aggregate net benefit to the Company in the range of \$440 million to \$470 million. The aggregate net benefit for the aforementioned period, which will be recognized in the fourth quarter of 2019, will increase the Company’s pre-tax operating earnings by a similar amount. For purposes of the Company’s presentation of Adjusted EBITDA, the aggregate net benefit will be allocated by the Company to the corresponding quarterly periods in 2018 and 2019 in which the business giving rise to the retroactive credit was conducted.</i></p>	164																
3/5/20	Stone, REGI	Press release	<p>Fourth Quarter 2019 Highlights:</p> <ul style="list-style-type: none">• <i>Revenues of \$1.0 billion, inclusive of the retroactive reinstatement of the Biodiesel Mixture Excise Tax Credit (BTC) for 2018 and 2019</i>• <i>Net income from continuing operations available to common stockholders of \$492.6 million, or \$11.52 per diluted share, including the BTC</i>• Adjusted EBITDA of \$65.0 million• Retroactive reinstatement of the BTC for 2018 and 2019 and extension for 2020-2022• <i>Net cash benefit of \$499.4 million from the BTC reinstatement for 2018 and 2019</i> is expected to be received in the second quarter of 2020 <p>Full Year 2019 Highlights:</p> <ul style="list-style-type: none">• <i>Revenues of \$2.6 billion, including the BTC</i>• <i>Net income from continuing operations available to common stockholders of \$381.1 million, or \$9.01 per diluted share, including the BTC</i>	166																

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
3/5/20	Warner, Robinson, REGI	Earnings call	<p>• Adjusted EBITDA of \$217.9 million</p> <p><i>[I]n the fourth quarter, we generated \$572 million of revenue after adjusting for the BTC. Adjusted EBITDA was \$16 million without the BTC, a 60% increase over the third quarter, and \$65 million with the fourth quarter BTC allocation. For the full year, as shown on slide 6, we sold 700 million gallons of fuel and produced 495 million gallons. After allocating the 2019 portion of the BTC, this generated \$2.4 billion of revenue and \$218 million of adjusted EBITDA.</i></p> <p><i>[W]e will receive nearly \$500 million net benefit from the 2018 and 2019 BTC. BTC uncertainty has now been removed and replaced with unprecedented certainty.</i></p> <p>Naturally, the major impact is from the BTC. Accounts receivables reflect the gross amount of the BTC to us, which has a partial offset in the accounts payable line for amounts we share with others. As CJ [Warner] mentioned, <i>the net benefit to us is almost exactly \$0.5 billion, with \$239 million for 2018 and \$261 million for 2019. We expect to collect all of the funds during the first half of 2020.</i></p>	167
3/5/20	Stone, Robinson, REGI	Earnings call	<p>Over the course of the year, we expanded blended biodiesel volumes in line with our downstream margin capture strategy. Recall that the downstream strategy is focused on 3 important objectives: Margin expansion across the value chain; realization of higher biodiesel values through blends of biodiesel into petroleum and renewable diesel; and increased demand for our biodiesel via sales of B100 to end consumers.</p> <p>Focusing on the blending aspect of our strategy, <i>blended volumes expanded substantially in 2019. Our blended fuel gallons grew 29% in fourth quarter and 65% for the year. We sold nearly 116 million blended gallons for the year.</i> In 2019, our average blend of biodiesel into petroleum diesel was 12%.</p> <p>We continue to experience through our distribution and cardlock businesses that moving right through the value chain to serve our customers directly, both increases our margin capture and enables us to expand the blending percentages of biodiesel. <i>With high quality and the confidence that great customer service inspires, our customers are able to reduce their carbon footprint seamlessly.</i></p>	168
3/5/20	Warner, Robinson, REGI	Earnings call	<p>Over the course of the year, we expanded blended biodiesel volumes in line with our downstream margin capture strategy. Recall that the downstream strategy is focused on 3 important objectives: Margin expansion across the value chain; realization of higher biodiesel values through blends of biodiesel into petroleum and renewable diesel; and increased demand for our biodiesel via sales of B100 to end consumers.</p> <p>Focusing on the blending aspect of our strategy, <i>blended volumes expanded substantially in 2019. Our blended fuel gallons grew 29% in fourth quarter and 65% for the year. We sold nearly 116 million blended gallons for the year.</i> In 2019, our average blend of biodiesel into petroleum diesel was 12%.</p> <p>We continue to experience through our distribution and cardlock businesses that moving right through the value chain to serve our customers directly, both increases our margin capture and enables us to expand the blending percentages of biodiesel. <i>With high quality and the confidence that great customer service inspires, our customers are able to reduce their carbon footprint seamlessly.</i></p>	170

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
			<i>We are seeing a significant downstream margin capture opportunity from blending. Our customers are recognizing that high-quality biodiesel blends can provide all the function of 100% biodiesel or petroleum diesel rather, and the robust low-carbon aspects of renewable diesel</i>	
3/5/20	Warner, Robinson, REGI	Earnings call	Analyst: “[O]n ... the self-blending, blending your own biodiesel with diesel to sell to direct customers. Growth this past year to 116 million gallons, up from 70 the prior year, it’s a pretty nice \$45 million, \$46 million increase. Can you maybe describe the number of terminals, or if this is better utilization across your terminals you’re serving to get those growth gallons? And can you maybe frame out for us what you think a fair outlook for 2020 might be? How many terminals you expect to build? And is there spare capacity in your existing terminals to see growth gallons at this point?” Warner: “There’s a wide variety of things, our team is capable of doing, in order <i>to expand that blending</i> . And it really is all about variety of things that happen in the downstream strategy. <i>Expanding our exposure to different terminals where we can get closer to customers is definitely one of those things</i> . Moving further downstream to have some of these <i>direct sale customers that we’ve described that we’re expanding is another very important way. The cardlock is an important way; expanding into distribution is an important way</i> . So, we have a very wide multipronged strategy we’re able to do this. And that’s why you’re seeing this rapid percentage increase that you’re seeing year-on-year.”	171
3/6/20	Howard, Warner, Stone, REGI	10-K	REGI’s “ <i>disclosure controls and procedures are effective as of December 31, 2019</i> ” and “ <i>internal control over financial reporting was effective as of December 31, 2019.</i> ”	173
3/6/20	Howard, Warner, Stone, REGI	10-K	<i>The reinstatement of the 2018 and 2019 BTC resulted in an \$499 million net benefit to our net income for the year ended December 31, 2019.</i> The BTC net benefit was allocated to the corresponding quarterly Adjusted EBITDA when the business giving rise to the retroactive credit was conducted. <i>For the years ended December 31, 2019 and 2018, the reinstatement of the 2018 and 2019 BTC resulted in a net benefit to our Adjusted EBITDA of \$261 million and \$238 million, respectively.</i>	175
4/30/20	Stone, REGI	Press release	<i>Revenues for the first quarter were \$475 million on 140 million gallons of fuel sold. Net income from continuing operations available to common stockholders was \$75</i>	177

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
			<i>million in the first quarter of 2020, compared to a net loss of \$41 million in the first quarter of 2019, which does not include the BTC allocation. Adjusted EBITDA in the first quarter was \$90 million, compared to \$29 million in the first quarter of 2019 including the allocation of the BTC.</i>	
4/30/20	Warner, Robinson, REGI	Earnings call	<i>[O]ur financial position is solid with the receipt of the BTC proceeds.</i> *** <i>In the second quarter, we expect gallon sold in the range of 155 million to 175 million and adjusted EBITDA in the range of \$20 to \$35 million. Second quarter guidance includes \$8 million of risk management gain recognized from the first of the month through last week.</i>	179
4/30/20	Stone, Robinson, REGI	Earnings call	Analyst: “Can you kind of walk us through the puts and takes as we go from I guess \$37 million, \$38 million adjusted number down to a \$20 million to \$35 million number?” Stone: “[A]s we go to forecasting and preparing to provide guidance, we kind of know a little bit of how April started off and through basically the end of last week, the volatile energy complex generated some additional risk management gains since the beginning of April. So we know we’re sitting on a position that we track regularly that already reflects some risk management gain and that’s built into our forecasting and guidance that we provide.”	180
4/30/20	Warner, Robinson, REGI	Earnings call	Analyst: “[Y]our adjusted EBITDA guidance range \$20 million to \$35 million, what would have you land at the high end of the range versus the lower end of the range? What are the specific items we can watch for that will cause that kind of high versus low performance?” Warner responded: “[I]t’s pretty much the factor that I outlined, particularly thinking about things like well the margin, of course, is one of them. And demand is going to be one, but from a controllable factor standpoint, our underlying performance is a big part of it.”	181
4/30/20	Warner, Robinson, REGI	Earnings call	Turning to other controllable aspects of our business.... [P]roprietary blending which captures margins and drive volumes with also strong. We’re pushing hard to increase biodiesel blending into both petroleum diesel and renewable diesel. Our volumes of biodiesel blended into renewable diesel increased to 71%. ***	183

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
			Downstream margin capture is our other primary strategic focus. As I highlighted earlier, <i>we're making good progress in increased proprietary blending, which both captures the full dollar BTC</i> and enhance the demand for biodiesel.	¶
5/1/20	Warner, Stone, REGI	10-Q	REGI's " <i>disclosure controls and procedures were effective as of March 31, 2020</i> " and " <i>internal control over financial reporting was effective as of March 31, 2020.</i> "	185
5/1/20	Warner, Stone, REGI	10-Q	<i>The reinstatement of the 2018 and 2019 BTC resulted in a \$499 million net benefit to our net income for the year ended December 31, 2019. The BTC net benefit was allocated to the corresponding quarterly Adjusted EBITDA when the business giving rise to the retroactive credit was conducted. For the three months ended March 31, 2019 and the year ended December 31, 2019, the reinstatement of the 2019 BTC resulted in a net benefit to our Adjusted EBITDA of \$56 million and \$261 million, respectively.</i>	187
8/4/20	Stone, REGI	Press release	<i>Revenues for the second quarter were \$546 million on 183 million gallons of fuel sold. Net income from continuing operations available to common stockholders was \$1 million in the second quarter of 2020, compared to a net loss of \$58 million in the second quarter of 2019. The net loss in the second quarter of 2019 does not include the [BTC] allocation, which was retroactively reinstated in December 2019. Adjusted EBITDA in the second quarter was \$8 million, compared to \$36 million in the second quarter of 2019 including the allocation of the BTC.</i>	189
8/4/20	Warner, Robinson, REGI	Earnings call	<i>[W]e've sustained our profitability generating nearly \$80 million of net income and close to \$100 million of adjusted EBITDA in the first half" and "we earned over \$8 million of adjusted EBITDA in the second quarter."</i>	190
8/4/20	Stone, Robinson, REGI	Earnings call	<i>At the end of the second quarter, we were in a net BTC receivable position of around \$10 million. Furthermore, we're collecting 2020 BTC amounts due as expected.</i>	191
8/4/20	Warner, Robinson, REGI	Earnings call	The whole idea of the downstream strategy is really getting closer to the customer. <i>We've got some excellent experience now through distribution business that we own, that selling direct to the customer does a great job of helping now understand the value of the lower carbon fuel as well as the quality of it and with that confidence of blending levels that we've experienced come up rather robustly, once we're in those channels.... So we've seen uptick with 107% increase in the blends of biodiesel into renewable diesel."</i>	193

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	¶
8/4/20	Warner, Stone, Robinson, REGI	Earnings call	Analyst: “[H]ow much can the industry consume of your blend and how much capacity do you have on the blend? I’m referring to you’re the biodiesel and renewable blend.” Warner: “So it’s been a very robust and steady uptick in those markets.” Stone: “Yes, I happen to have been looking at those numbers over the weekend and California is about 4-billion-gallon market. It was like 3.8 billion last year and <i>the recent blend data which is, includes biodiesel and renewable diesel into California has been growing almost each quarter and it’s all the way up to 23% now</i> and to CJ’s point, it can go higher particularly with renewable diesel at high concentration rates.”	194
8/5/20	Warner, Stone, REGI	10-Q	REGI’s “disclosure controls and procedures were effective as of June 30, 2020” and “internal control over financial reporting was effective as of June 30, 2020.”	196
8/5/20	Warner, Stone, REGI	10-Q	<i>The reinstatement of the 2018 and 2019 BTC resulted in a \$499 million net benefit to our net income for the year ended December 31, 2019.</i> The BTC net benefit was allocated to the corresponding quarterly Adjusted EBITDA when the business giving rise to the retroactive credit was conducted. <i>For the three and six months ended June 30, 2019 and the year ended December 31, 2019, the reinstatement of the 2019 BTC resulted in a net benefit to our Adjusted EBITDA of \$78 million, \$135 million, and \$261 million, respectively.</i>	197
11/5/20	Stone, REGI	Press release	<i>Revenues for the third quarter were \$576 million on 176 million gallons of fuel sold. Net income from continuing operations available to common stockholders was \$26 million in the third quarter of 2020,</i> compared to a net loss of \$14 million in the third quarter of 2019. The net loss in the third quarter of 2019 does not include the [BTC] allocation, which was retroactively reinstated in December 2019. <i>Adjusted EBITDA in the third quarter was \$58 million, compared to \$88 million in the third quarter of 2019, including the allocation of the BTC.</i>	199
11/5/20	Warner, Robinson, REGI	Earnings call	<i>[S]ales of blends of biodiesel and renewable diesel grew 70% year-over-year.</i> Sales to end users are also a key element of our downstream strategy and they grew 26% in the quarter versus last year.	201
11/5/20	Stone, Robinson, REGI	Earnings call	<i>[W]e brought down sales volumes of petroleum diesel quite significantly as we shifted our blending strategy to higher margin opportunities.</i>	202

Chart of False and/or Misleading Class Period Statements

WHEN	WHO	WHERE	STATEMENT	
11/6/20	Warner, Stone, REGI	10-Q	REGI's "disclosure controls and procedures were effective as of September 30, 2020" and "internal control over financial reporting was effective as of September 30, 2020."	204
11/6/20	Warner, Stone, REGI	10-Q	<i>The reinstatement of the 2018 and 2019 BTC resulted in a \$499 million net benefit to our net income for the year ended December 31, 2019.</i> The BTC net benefit was allocated to our corresponding quarterly adjusted earnings before interest, taxes, depreciation and amortization ("Adjusted EBITDA") when the business giving rise to the retroactive credit was conducted. <i>For the three and nine months ended September 30, 2019 and the year ended December 31, 2019, the reinstatement of the 2019 BTC resulted in a net benefit to our Adjusted EBITDA of \$77 million, \$212 million, and \$261 million, respectively.</i>	205
12/3/20	Warner, REGI	Press release	Stone had "ceased to serve as the Company's principal financial officer" and was instead the "Senior Vice President, Commercial Performance of the Company."	207

SPECIAL APPENDIX

CASE NO. 22-335

INDEX TO DOCUMENT REFERENCES IN SPECIAL APPENDIX

<u>Description of Item</u>	<u>Record Entry No.</u>	<u>Appendix Page No.</u>
Opinion and Order (January 20, 2022)	R.69	SPA-1
Judgment (January 20, 2022)	R.71	SPA-13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE RENEWABLE ENERGY GROUP : 21cv1832 (DLC)
SECURITIES LITIGATION :
 :
 : OPINION AND ORDER
-----X

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DENISE COTE, District Judge:

Investors in Renewable Energy ("REG"), a producer of biodiesel fuel, have brought a federal securities class action against the company and four of its officers (the "Individual Defendants"). The plaintiff alleges that the defendants made

two sets of false statements regarding the adequacy of REG's controls, specifically its accounting and operating controls. In a disclosure in mid-2020, REG revealed that it had made accounting errors during the early days of the pandemic when staff were working from home. Then, in early 2021, REG revealed that over the course of more than three years there had been an intermittent fuel blending discrepancy at one of its twelve operating facilities. According to the plaintiff, defendants' statements about the adequacy of its controls artificially inflated the price of REG's stock between March 8, 2018 and February 25, 2021 (the "Class Period"). The defendants have moved to dismiss for failure to state a claim. Defendants' motion is granted.

Background

The following facts are drawn from the Amended Complaint and documents relied upon by the Amended Complaint. For the purposes of deciding this motion, plaintiff's factual allegations are accepted as true, and all reasonable inferences are drawn in plaintiff's favor.

REG is a renewable fuel company and the largest biodiesel producer in the United States. REG operates twelve biorefineries, including a biodiesel production facility in Seneca, Illinois. REG sells both B100, which is 100% biodiesel,

and blended B99.9 biodiesel, which is a blend of B100 and 0.1% of petroleum diesel.

I. Projection Error

On April 30, 2020, defendants told investors that REG expected a gain of "adjusted EBITDA in the range of \$20 to \$35 million" in the second quarter of 2020. On May 1, 2020, the Company filed its first quarter 2020 10-Q and assured investors that its "disclosure controls and procedures were effective as of March 31, 2020" and its "internal control over financial reporting was effective as of March 31, 2020."

On June 23, 2020, however, REG disclosed a revised outlook of the second-quarter 2020 adjusted EBITDA. REG announced that the adjusted EBITDA was actually negative \$2 to \$12 million.

In a press release, REG explained that one of the factors contributing to the revised EBITDA calculation was that

[t]he guidance model used in connection with the previous estimate contained inadvertent calculation errors, which on their own would have resulted in a significant reduction in the Company's previous Adjusted EBITDA estimate.

REG attributed these calculation errors to "COVID-19 work from home issues" and the failure by accounting staff to correctly reconcile "MS exchange sheets." Upon this announcement, REG's share price fell by \$5.85 to close at \$22.73 per share on June 24, 2020.

II. Blending Failures at Seneca Plant

In addition to earning revenue from the sale of biodiesel, REG receives biodiesel mixture excise tax credits ("BTCs"). BTCs are federal tax incentives which provide a \$1.00 excise tax credit for each gallon of blended biofuel produced. To receive a BTC, the company must either use B99.9 in its own operations or sell the blended mixture to a third party. The company must also show proof of the specific gallons of B99.9 created, used, and sold. The BTC must first be taken as a credit against the Company's fuel tax liability and any excess can be claimed as a direct payment from the IRS.

On February 25, 2021, REG announced that "[d]ue to failures in the diesel additive system" at the facility in Seneca "petroleum diesel was periodically not added to certain loads" for two dozen customers. As a consequence, it was "the Company's customers who received these loads and subsequently added petroleum diesel" who were the proper claimants for the associated BTC payments.

REG noted that it "discovered the blending discrepancy in connection with its preparation for a standard IRS audit of its BTC filings." REG agreed to return to the IRS BTC credits totaling \$40.5 million for the years 2017, 2018, 2019 and the first three quarters of 2020 "to correct the REG Seneca BTC claims."

Renewable Energy filed its Amended 2019 10-K that same day. In the 10-K, REG described the effect of the discrepancy, noting that

[t]he impact on the Company's financial statements for the years ended December 31, 2019 and 2018 is to decrease Biomass-based diesel government incentives revenue and increase interest expense (thereby increasing accounts payable and accrued expenses and other liabilities as shown on the balance sheet).

On February 25, during the fourth-quarter 2020 Earnings Call, Cynthia Warner, Chief Executive Officer from January 14, 2019 to present, stated that "it really is about putting in place stronger systems of assurance." She further explained that

[t]he situation at Seneca was a one-off, it was a design issue, and it was intermittent. So putting in place, the extra assurance processes give us confidence that if there were something like that, we would become aware of it.

On February 26, the Company's share price fell 9.5% to close at \$77.77 per share.

I. Procedural History

This action was filed on March 2, 2021. On May 19, Steven Rosa was appointed as lead plaintiff, in accordance with the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4(a)(3). The lead plaintiff filed an amended complaint ("FAC") on July 9.

The FAC alleges (1) that the defendants violated § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, and (2) that the Individual Defendants violated § 20(a) of the Exchange Act, 15 U.S.C. § 78t(a). On August 6, the defendants moved to dismiss. The motion became fully submitted on September 24.

Discussion

When deciding a motion to dismiss under Rule 12(b)(6), Fed. R. Civ. P., a court must “accept all factual allegations as true” and “draw all reasonable inferences in favor of the plaintiffs.” Melendez v. City of New York, 16 F.4th 992, 1010 (2d Cir. 2021) (citation omitted). A claim is sufficiently plausible to withstand a motion to dismiss when the “factual content” of the complaint “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Cavello Bay Reinsurance Ltd. v. Shubin Stein, 986 F.3d 161, 165 (2d Cir. 2021) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). In the context of a securities class action, a court may consider not only the complaint itself, but also “any written instrument attached to the complaint, statements or documents incorporated into the complaint by reference, legally required public disclosure documents, and documents possessed by or known to the plaintiff

upon which it relied in bringing the suit.” In re Synchrony Fin. Sec. Litig., 988 F.3d 157, 171 (2d Cir. 2021).

A complaint alleging securities fraud must satisfy the heightened pleading requirements of the PSLRA and Fed. R. Civ. P. 9(b) by stating “with particularity the circumstances constituting fraud.” Altimeo Asset Mgmt. v. Qihoo 360 Tech. Co., 19 F.4th 145, 150 (2d Cir. 2021) (citation omitted). SEC Rule 10b-5 renders it unlawful to “make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading . . . in connection with the purchase or sale of any security.” 17 C.F.R. § 240.10b-5; see also 15 U.S.C. § 78j(b). To avoid dismissal under Rule 10b-5, a complaint must plausibly allege that the defendant “(1) made misstatements or omissions of material fact, (2) with scienter, (3) in connection with the purchase or sale of securities, (4) upon which the plaintiff relied, and (5) that the plaintiff's reliance was the proximate cause of its injury.” Altimeo Asset Mgmt., 19 F.4th at 149–50 (2d Cir. 2021) (citation omitted). Here, the disputed issue is whether the plaintiff has adequately pleaded facts giving rise to a strong inference of scienter.

To adequately plead scienter, the PSLRA requires plaintiffs to “state with particularity facts giving rise to a strong

inference that the defendant acted with the required state of mind.” In re Synchrony Fin. Sec. Litig., 988 F.3d at 167 (citation omitted). In evaluating the sufficiency of scienter allegations, courts must “tak[e] into account plausible opposing inferences and consider[] plausible, nonculpable explanations for the defendant’s conduct, as well as inferences favoring the plaintiff.” Employees’ Ret. Sys. of Gov’t of the Virgin Islands v. Blanford, 794 F.3d 297, 305 (2d Cir. 2015) (citation omitted).

The requisite scienter can be established by “alleging facts (1) showing that the defendants had both motive and opportunity to commit the fraud or (2) constituting strong circumstantial evidence of conscious misbehavior or recklessness.” Setzer v. Omega Healthcare Invs., Inc., 968 F.3d 204, 212 (2d Cir. 2020) (citation omitted).

Circumstantial evidence can support an inference of scienter in a variety of ways, including where defendants (1) benefitted in a concrete and personal way from the purported fraud; (2) engaged in deliberately illegal behavior; (3) knew facts or had access to information suggesting that their public statements were not accurate; or (4) failed to check information they had a duty to monitor.

Blanford, 794 F.3d at 306 (citation omitted).

When plaintiffs have not pleaded motive on the part of corporate officers, “the strength of the circumstantial allegations must be correspondingly greater.” ECA, Local 134

IBEW Joint Pension Tr. of Chi. v. JP Morgan Chase Co., 553 F.3d 187, 198-99 (2d Cir. 2009). Where plaintiffs “rely solely on the [d]efendants’ alleged conscious misbehavior or recklessness,” they must adequately plead “conscious recklessness -- i.e., a state of mind approximating actual intent.” Stratte-McClure v. Morgan Stanley, 776 F.3d 94, 106 (2d Cir. 2015) (citation omitted).

“In the securities fraud context, recklessness must be conduct that is highly unreasonable, representing an extreme departure from the standards of ordinary care, not merely a heightened form of negligence.” In re Advanced Battery Techs., Inc., 781 F.3d 638, 644 (2d Cir. 2015) (citation omitted).

“Corporate officials need not be clairvoyant” to avoid a finding of recklessness; “they are only responsible for revealing those material facts reasonably available to them.” Novak v. Kasaks, 216 F.3d 300, 309 (2d Cir. 2000). Finally, “[w]here a defendant is a corporation, this requires pleading facts that give rise to a strong inference that someone whose intent could be imputed to the corporation acted with the requisite scienter.” Jackson v. Abernathy, 960 F.3d 94, 98 (2d Cir. 2020) (citation omitted).

The FAC fails to plead the defendants’ scienter. In opposition to the defendants’ motion to dismiss, the plaintiff relies exclusively on an assertion that the defendants’ reckless conduct creates a strong inference of scienter. The plaintiff

has not pleaded that any defendant benefitted in a concrete and personal way from the purported fraud or that any defendant engaged in deliberately illegal behavior. The plaintiff's circumstantial evidence thus rests on the assertions that the defendants knew facts or had access to information suggesting that their public statements were not accurate and failed to check information they had a duty to monitor.

"Where plaintiffs contend defendants had access to contrary facts, they must specifically identify the reports or statements containing this information." Novak, 216 F.3d at 309. The plaintiff fails to do so. The plaintiff does not reference any specific information that a defendant knew or should have known that would have alerted them to the calculation errors made during the early days of the pandemic when accounting staff were working from home or to the intermittent Seneca Plant blending errors. Relatedly, the plaintiff fails to identify any reports or statements that a defendant had a duty to monitor which would have alerted the defendant to the errors.

Based on REG's representation that it discovered the fuel-blending problem at the Seneca facility while preparing for an IRS audit, the plaintiff suggests in opposition to this motion that the defendants must have known of the fuel blending problem at the Seneca plant for a significant period of time, including before its filing of its 3Q20 results, and yet concealed those

problems from investors. The FAC does not allege that the problem was discovered at any particular point in time, including before the filing of its 3Q20 results. The FAC's allegations are consistent with the discovery of the problem during the fourth quarter of 2020, and the reporting of the problem and the results of its investigation when it issued its Form 10-K for 2020 on March 1, 2021. A company is permitted a period of time to investigate any problem it detects before reporting it to the public. See Slayton v. Am. Exp. Co., 604 F.3d 758, 777 (2d Cir. 2010) (finding that taking the time to order an investigation, ascertain, and disclose future losses "was a prudent course of action that weakens rather than strengthens an inference of scienter").

Plaintiff next argues that even if he has failed to plead scienter as to any Individual Defendant or any particular person, the FAC does plead corporate scienter. Plaintiff argues that the pleadings show corporate scienter because there was systemic recklessness at REG and management repeatedly certified the effectiveness of the company's internal controls.

To show corporate scienter, "a plaintiff must show that the misstatement was not a case of mere mismanagement, but rather the product of collective fraudulent conduct." Jackson, 960 F.3d at 96. The misstatements here were, at worst, a result of

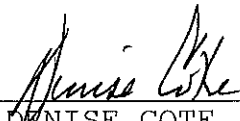
negligence in maintaining internal controls. They do not plead collective fraudulent conduct.

Finally, the plaintiff contends that the magnitude of the accounting error, turning a projection of a \$35 million gain to a projected \$12 million loss, is sufficient to plead recklessness. It is not. While the size of the error may properly be considered when evaluating an allegation of recklessness, it is not sufficient standing by itself to plead recklessness. See In re Perrigo Co. PLC Sec. Litig., 435 F. Supp. 3d 571, 588 (S.D.N.Y. 2020).

Conclusion

Defendants' August 6, 2021 motion to dismiss is granted. The Clerk of Court shall close the case.

Dated: New York, New York
January 20, 2022



DENISE COTE
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE RENEWABLE ENERGY GROUP
SECURITIES LITIGATION,

21 **CIVIL** 1832 (DLC)

JUDGMENT

-----X

It is, **ORDERED, ADJUDGED AND DECREED:** That for the reasons
stated in the Court's Opinion and Order dated January 20, 2022, Defendants' August 6, 2021
motion to dismiss is granted; accordingly, the case is closed.

Dated: New York, New York
January 20, 2022

RUBY J. KRAJICK

BY:

Clerk of Court

K. mango

Deputy Clerk