

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of

LIGANG WANG

INITIAL DECISION
August 20, 2015

APPEARANCES: Jack Kaufman, Christina M. McGill, and Kristin Pauley for the Division of Enforcement, Securities and Exchange Commission

Ligang Wang, *pro se*

BEFORE: James E. Grimes, Administrative Law Judge

Summary

In this Initial Decision, I GRANT the Division of Enforcement's Motion for an Initial Decision Imposing Sanctions Against Respondent Ligang Wang. Respondent Ligang Wang is ordered to cease and desist from further violations of Section 16(a) of the Securities Exchange Act of 1934 and Rule 16a-3 thereunder. Wang is further ordered to pay civil penalties totaling \$101,250.

Procedural Background

The Commission initiated this proceeding in September 2014, by issuing Wang an Order Instituting Cease-and-Desist Proceedings (OIP). As authority, the OIP cites Section 21C of the Securities Exchange Act of 1934. OIP at 1; *see* 15 U.S.C. § 78u-3. The OIP alleges that Wang, a resident of the People's Republic of China, violated Exchange Act Section 16(a) and Rule 16a-3 thereunder. OIP at 1, 3. In general terms, the OIP alleges fifteen instances in which Wang failed to report timely, if at all, his sale or purchase of stock in China Shen Zhou Mining & Resources, Inc. (Shen Zhou), which at that time was a publicly traded company of which he was an officer. *Id.* at 1-3. The OIP also alleges that Wang failed to file required annual statements to report transactions that he previously failed to report during fiscal years 2010 and 2011. *Id.* at 3.

I held a telephonic prehearing conference in October 2014, during which counsel for the Division of Enforcement reported that it was attempting to serve Wang in accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. Conference Transcript 3-4. Subsequently, on June 1, 2015, the Division

presented evidence that Wang was served with the OIP on March 3, 2015. *See Ligang Wang*, Admin Proc. Rulings Release No. 2749, 2015 SEC LEXIS 2186, at *1-2 (June 1, 2015). Because Wang had not filed an Answer to the OIP, I ordered him to show cause by June 22, 2015, why he should not be found in default. *Id.* at *2.

After Wang failed to show cause, I entered an order finding him in default. *Ligang Wang*, Admin Proc. Rulings Release No. 2870, 2015 SEC LEXIS 2641, at *1 (June 26, 2015). I also directed the Division to file a motion for sanctions together with supporting evidence. *Id.* at *1-2. The Division filed its motion on July 28, 2015.¹ Wang has not filed an opposition to the Division's motion. *See* 17 C.F.R. § 201.154(b) (“briefs in opposition to a motion shall be filed within five days after service of the motion”).

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed under Rule 323. *See* 17 C.F.R. § 201.323. Consistent with Commission Rule of Practice 155, I have relied on the uncontested factual allegations in the OIP. *See* 17 C.F.R. § 201.155(a). I have applied preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981).

Findings of Fact

Shen Zhou is a Nevada corporation. OIP at 1. Its principal place of business is in Beijing. *Id.* Shen Zhou's common stock was previously registered with the Commission and listed on the New York Stock Exchange. *Id.* Shen Zhou's securities were delisted in June 2013 and the Commission revoked its registration in June 2014. *Id.*

Wang is a resident of the People's Republic of China. OIP at 1. Since 2002, he has been president of Shen Zhou's subsidiary Qianzhen Mining. *See id.* at 1-2; Shen Zhou's 2010 Form 10-K at 43. Since 2007, he has been vice president of Shen Zhou. OIP at 1; Shen Zhou's 2010 Form 10-K at 43. Wang's position made him an officer for purposes of Exchange Act Section 16. OIP at 2; *see* 15 U.S.C. § 78p; *see also* Shen Zhou's 2010 Form 10-K at 43 (listing Wang among nine officers and directors).

As is reflected in the chart below, while serving as Shen Zhou's vice president, Wang bought shares of Shen Zhou common stock on five occasions between December 2010 and March 2011. OIP at 3. He never reported these transactions, which collectively involved about 52,000 shares. *Id.* Between October 2010 and January 2011, Wang also sold shares of Shen Zhou on ten occasions. *Id.* at 2-3. He never reported three of these sales. *Id.* at 2-3. He reported all of the remaining seven sales on June 14, 2011, between five and six months after he was required to report them. *Id.* at 2-3; *see* 15 U.S.C. § 78p(a)(2)(C) (reporting requirement).

¹ The Division's motion is supported by Exhibit A, the first page of Shen Zhou's Form 10-K for the fiscal year ended December 31, 2010. Under Commission Rule of Practice 323, I take official notice of Shen Zhou's Form 10-K and other documents related to Shen Zhou located on the Commission's EDGAR database. *See Am. Stellar Energy, Inc.*, Exchange Act Release No. 64897, 2011 SEC LEXIS 2455, at *25 n.27 (July 18, 2011); 17 C.F.R. § 201.323.

The unreported sales involved 17,000 shares. OIP at 2-3. The late-reported sales involved 108,500 shares. *Id.* at 2-3. Wang's violations are summarized in the chart below. *See id.*

Transaction Date	Reporting Due Date	<u>Date Reported</u>	Transaction Type	<u># of Shares</u>	<u>Share Price</u>
10/21/2010	10/25/2010	Never reported	Sale	10,000	\$4.13
12/13/2010	12/15/2010	6/14/2011	Sale	20,000	\$4.16
12/15/2010	12/17/2010	6/14/2011	Sale	25,000	\$4.70
12/27/2010	12/29/2010	Never Reported	Sale	5,000	\$4.50
12/27/2010	12/29/2010	6/14/2011	Sale	5,000	\$4.50
12/28/2010	12/30/2010	6/14/2011	Sale	35,000	\$5.11
12/29/2010	1/3/2011	6/14/2011	Sale	20,400	\$7.68
12/29/2010	1/3/2011	Never reported	Sale	2,000	\$7.68
12/29/2010	1/3/2011	Never reported	Purchase	22,400	\$7.71
12/30/2010	1/4/2011	Never reported	Purchase	16,000	\$8.60
1/4/2011	1/6/2011	6/14/2011	Sale	1,000	\$9.60
1/5/2011	1/7/2011	6/14/2011	Sale	2,100	\$10.50
1/13/2011	1/18/2011	Never reported	Purchase	11,000	\$8.88
2/7/2011	2/9/2011	Never reported	Purchase	2,500	\$6.53
3/30/2011	4/1/2011	Never reported	Purchase	200	\$5.04

Conclusions of Law

Exchange Act Section 16(a) requires an officer of an issuer registered with the Commission under Exchange Act Section 12 to file certain reports. *See* 15 U.S.C. § 78p(a)(1). As is relevant to this matter, Section 16(a) requires an officer to report his or her holdings of the issuer's securities within two business days of any change in his or her ownership. 15 U.S.C. § 78p(a)(2). These reports are filed using Exchange Act Form 4. 17 C.F.R. § 240.16a-3(a). Under Exchange Act Rule 16a-3(f)(1), an officer must annually report transactions not

previously reported.² 17 C.F.R. § 240.16a-3(f)(1)(iii). This includes all holdings and transactions that should have been reported during the most recent fiscal year, but that were not. *Id.* Annual reports are filed using Exchange Act Form 5. 17 C.F.R. § 240.16a-3(a). “No showing of scienter is required to establish a violation of” Section 16(a). *John A. Carley*, Securities Act of 1933 Release No. 8888, 2008 SEC LEXIS 222, at *82 n.95 (Jan. 31, 2008).

The uncontested facts in the OIP show that Wang violated Exchange Act Section 16(a) and Rule 16a-3 thereunder. As Shen Zhou’s vice president, he is an officer within the meaning of Section 16(a). OIP at 2; *see* Shen Zhou’s 2010 Form 10-K at 43. Wang was therefore obligated to file the reports required by that section and Rule 16a-3(f)(1) during the time that Shen Zhou’s securities were registered with the Commission.

Wang, however, wholly failed to report the five instances when he purchased a total of 52,100 Shen Zhou shares. He also failed to report three instances in which he sold a total of 17,000 shares. By wholly failing to report these transactions, Wang necessarily failed to report them (1) within two business days of their occurrence; or (2) within forty-five days of the end of either 2010 or 2011. As a result, Wang violated Exchange Act Section 16(a)(2)(C) and Rule 16a-3(f)(1) with respect to these eight transactions.

Although Wang reported seven instances in which he sold Shen Zhou shares, he did so five to six months after the fact. Wang therefore violated Section 16(a)(2)(C) as to these transactions. Additionally, five of the late-reported sales occurred in 2010 but were not reported until June 2011. The Section 16(a) deadline for four of these late-reported sales fell in the 2010 fiscal year. Because these four sales were not reported within two business days, they should have been reported on Form 5 within forty-five days after the end of 2010. *See* 17 C.F.R. § 240.16a-3(f)(1)(iii). Because these four sales were not reported on Form 5 within forty-five days after the end of 2010, Wang violated Rule 16a-3(f)(1) with respect to these sales, as well.

Sanctions

The Division requests a cease-and-desist order and civil monetary penalties totaling \$127,500. Mot. at 7-9.

1. The cease-and-desist order

Section 21C of the Exchange Act authorizes the Commission to issue a cease-and-desist order against a person who “is violating, has violated, or is about to violate” any provision of that Act or its implementing rules or regulations. 15 U.S.C. § 78u-3. In deciding whether to issue a cease-and-desist order, I must consider: (1) the seriousness of the violations at issue; (2) whether the violations are isolated or recurrent; (3) Wang’s state of mind; (4) the sincerity of Wang’s assurances against future violations; (5) whether Wang recognizes the wrongful nature of his

² Annual reports are due within forty-five days of the end of an issuer’s fiscal year. 17 C.F.R. § 240.16a-3(f)(1). According to the exhibit attached to the Division’s motion, Shen Zhou used the calendar year as its fiscal year. *See* Exhibit A.

conduct; (6) whether Wang will have opportunities to commit future violations; (7) the recency of the violations; (8) the degree of harm to investors or the marketplace resulting from the violations; and (9) the remedial function a cease-and-desist order would serve in the overall context of any other sanctions sought in this proceeding.” *Francis V. Lorenzo*, Securities Act Release No. 9762, 2015 SEC LEXIS 1650, at *41, *54 & n.60 (Apr. 29, 2015). The inquiry into whether to issue a cease-and-desist order “is flexible, and no single factor is dispositive.” *Id.* at *54.

The Commission has directed that “absent evidence to the contrary, a single past violation ordinarily suffices to raise a sufficient risk of future violations.” *Rodney R. Schoemann*, Securities Act Release No. 9076, 2009 SEC LEXIS 3939, at *48 (Oct. 23, 2009); see *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *102-03 (Jan. 19, 2001), *recon. denied*, Exchange Act Release No. 44050, 2001 SEC LEXIS 422 (Mar. 5, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). *Schoemann* could be read as creating a presumption that if the Division meets its threshold burden to show that a violation occurred, a cease-and-desist order will be issued. Commission practice shows, however, that it did not intend to create a presumption and that I should weigh the factors traditionally considered in determining whether to issue a cease-and-desist order. See *Francis V. Lorenzo*, 2015 SEC LEXIS 1650, at *54-58; *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *88-90 (May 2, 2014).

Weighing the factors described above, a cease-and-desist order is appropriate. Section 16 and the rules thereunder play an important role in preventing abusive trading by insiders. *The Application of mPhase Techs., Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at *22 & n.39 (Feb. 2, 2015). In enacting Section 16, Congress hoped to address instances in which corporate insiders used inside information to their trading advantage or “manipulated the market price of their stock by causing a corporation to follow financial policies calculated to produce sudden changes in market prices in order to obtain short swing profits.” See Interpretive Release on Rules Applicable to Insider Reporting and Trading, Exchange Act Release No. 18114, 1981 WL 31301, at *1 (Sept. 24, 1981). “[B]eliev[ing] prompt publicity to be a potent weapon in the effort to curb the abuse of inside information,” Congress thought Section 16 would “deprive officers, directors and substantial stockholders of the incentive to utilize their positions to trade in the securities of their companies on the basis of inside information.” *Id.* The Commission has thus described Section 16’s disclosure requirements as being “fundamental to the securities industry and the protection of investors.” *The Application of mPhase Tech., Inc.*, 2015 SEC LEXIS 398, at *22.

Given the important role Section 16 plays, violating its requirements is a serious matter. By failing to disclose his transactions in Shen Zhou’s stock, Wang subverted Congress’s fundamental purpose of protecting the investing public and the industry. He also denied the investing public important information.

Wang’s violations were not isolated. He failed to report, timely or otherwise, his five purchases of Shen Zhou’s stock. Wang also failed to report, timely or otherwise, three instances

in which he sold Shen Zhou's stock. Seven other times, he failed to timely report his sales of Shen Zhou's stock. Wang's failures were thus recurrent.

The Division presented no direct evidence of Wang's state of mind. Wang, however, was aware of the requirement to report his transactions; he reported seven of them on June 14, 2011. Even so, he never reported the remaining eight transactions. At best, Wang's continuing failure to report the remaining eight transactions reflects indifference toward his obligations under Section 16 and Rule 16a-3(f).

Wang has not answered the OIP, responded to the order to show cause, or opposed the Division's motion for sanctions. He has therefore failed to make any assurances against future violations or to show that he recognizes the wrongful nature of his conduct. These facts in combination with Wang's repeated violations strongly support the determination that future violations are reasonably likely. *See Rodney R. Schoemann*, 2009 SEC LEXIS 3939, at *48; *see also KPMG Peat Marwick LLP*, 2001 SEC LEXIS 98, at *114 (the showing necessary to demonstrate the likelihood of future violations is "significantly less than that required for an injunction"). Of course, the fact the Commission revoked Shen Zhou's registration means that any future violation will not occur unless Wang becomes an officer with another registered issuer.

The Division did not present direct evidence that investors or the marketplace were harmed. Given the "fundamental" role Section 16 plays in protecting investors and the industry, however, the existence of a violation of Section 16 alone suffices to demonstrate harm to investors and the marketplace. *Cf. The Application of mPhase Tech., Inc.*, 2015 SEC LEXIS 398, at *22 (describing Section 16's disclosure requirements as being "fundamental to the securities industry and the protection of investors").

In context, a cease-and-desist order would serve an important remedial function. Such an order will serve the interests of specific and general deterrence. It will deter Wang and will further the Commission's interest in deterring others from engaging in similar misconduct.

Wang's violations are somewhat remote in time and are thus not recent. Given that all the other factors discussed above weigh against Wang, the fact that his misconduct is not recent is of no moment.

In light of the foregoing, I find it appropriate to order that Wang cease and desist from committing violations of Exchange Act Section 16(a) and Rule 16a-3 thereunder.

2. *Monetary penalties*

Section 21B of the Exchange Act permits me to impose a civil monetary penalty in a case instituted under Section 21C based simply on the determination that a respondent has violated any provision of the Exchange Act or the rules thereunder. *See* 15 U.S.C. § 78u-2(a)(2)(A). The statute sets out a three-tiered system for determining the maximum civil penalty for each act or omission. 15 U.S.C. § 78u-2(b). For the time period at issue, the maximum first, second, and

third-tier penalty for each violation for a natural person is \$7,500, \$75,000, and \$150,000, respectively. 15 U.S.C. § 78u-2(b); 17 C.F.R. § 201.1104, Subpt. E., Table IV.

A maximum third-tier penalty is permitted if: (1) the violations at issue involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) such acts or omissions directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the acts or omissions. 15 U.S.C. § 78u-2(b)(3). Second-tier penalties may be imposed if the misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 15 U.S.C. § 78u-2(b)(2). First-tier penalties may be imposed simply for each violation. 15 U.S.C. § 78u-2(b)(1). Although the tier determines the maximum penalty, “each case ‘has its own particular facts and circumstances which determine the appropriate penalty to be imposed’” within the tier. *SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007) (quoting *SEC v. Moran*, 944 F. Supp. 286, 296-97 (S.D.N.Y. 1996)). I thus have discretion in determining the appropriate penalty within a given tier. *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *48 (Dec. 5, 2014); see *First Secs. Transfer Systems, Inc. and Steven Telsey*, Exchange Act Release No. 36183, 1995 SEC LEXIS 2261, at *11 (Sept. 1, 1995) (“Nothing in the language of the statute or its legislative history suggests that the Commission is prohibited from assessing any lesser amount up to the maximum.”).

The Division concedes that only first-tier penalties are appropriate here. Mot. at 8. I agree. Because first-tier penalties may be imposed simply based on the fact of a violation, the statutory requirement for imposing first-tier penalties is met.

I also agree with the Division’s calculation that Wang is responsible for seventeen violations. Mot. at 8-9. Fifteen times, Wang failed to report a transaction in Shen Zhou stock within two days of the transaction. Two times, Wang failed file a Form 5 annual report disclosing transactions that were not elsewhere disclosed.

The Division proposes that I treat all violations equally and impose a penalty of \$7,500 for each violation, for a total penalty of \$127,500. Mot. at 9. But treating all violations equally would discourage individuals who failed to timely report from filing a report late or from reporting a previously undisclosed transaction in an annual report. Those who fail to report transactions within two days should be encouraged to at least disclose the reportable transactions later, even if they do so delinquenty.

I therefore divide Wang’s violations into two groups. In the first group are the seven transactions for which Wang filed delinquent reports in June 2011. In the second group are the eight transactions Wang wholly failed to report plus the two annual reports that he neglected to file. As to the latter group, a maximum penalty of \$7,500 per violation is warranted. As to the former group, I impose a penalty of \$3,750 per violation.

I impose penalties in these amounts to serve the twin goals of encouraging compliance with Exchange Act Section 16 and Rule 16a-3 and discouraging others from following Wang’s

example. Imposing a maximum penalty for those transactions Wang never reported, immediately or in annual reports, and for failing to file annual reports at all for two years, serves these goals. A maximum penalty is also warranted because by filing seven reports, Wang showed that he knew about Exchange Act Section 16's requirements. He nonetheless failed to report his other transactions.

Imposing a lesser penalty for late compliance will also encourage compliance with Exchange Act Section 16 and Rule 16a-3 and discourage others from following Wang's example. A penalty of \$3,750 is significant enough to encourage timely filing in the first place, but, at half the maximum, not so high as to discourage delinquent filers from filing at all. And in Wang's specific case, a penalty of half the maximum gives Wang credit for reporting some of his transactions, but imposes a cost for having done so five to six months late.

Balancing the above factors and considering the serious nature of violating Section 16(a) and its implementing rules, I impose a civil monetary penalty of \$101,250.

Order

IT IS ORDERED that, under Section 21C of the Securities Exchange Act of 1934, Respondent Ligang Wang shall CEASE AND DESIST from committing or causing any violations or future violations of Section 16(a) of the Securities Exchange Act of 1934, and Rule 16a-3 thereunder.

IT IS FURTHER ORDERED that, under Section 21B of the Securities Exchange Act of 1934, Ligang Wang shall PAY A CIVIL MONEY PENALTY in the amount of \$101,250.

Payment of civil penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or (3) by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. Any payment by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order shall include a cover letter identifying the Respondent and Administrative Proceeding No. 3-16094, and shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360, 17 C.F.R. § 201.360. Under that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the

Initial Decision, pursuant to Rule of Practice 111, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Wang is notified that he may move to set aside the default in this case. Rule of Practice 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.*

James E. Grimes
Administrative Law Judge