

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

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

WELL ADVANTAGE LIMITED, et al.,

Defendants.
-----x

DOCUMENT
ELECTRONICALLY FILED

DOC #:

DATE FILED: 5-16-13

12 Civ. 5786 (RJS)

ECF Case

FINAL JUDGMENT AS TO DEFENDANT CHOO ENG HONG

WHEREAS the Securities and Exchange Commission (“Commission”) has filed its First Amended Complaint (“Complaint”) and Defendant Choo Eng Hong (“Defendant”) has entered a limited appearance;

WHEREAS Defendant consented to the Court’s jurisdiction over Defendant, for purposes of this Final Judgment, and over the subject matter of this action, consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction), waived findings of fact and conclusions of law, and waived any right to appeal from this Final Judgment;

WHEREAS the Court requested the Commission to explain why this settlement is reasonable; and

WHEREAS the Court finds that, based on the reasons stated in the Commission’s letter (attached hereto), dated May 14, 2103, that the settlement between the Commission and Defendant, as reflected in the terms of this Final Judgment, is fair, reasonable and adequately serves the public interest;

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and her agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) 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 the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$466,477.62, representing profits gained as a result of the conduct alleged in the Complaint, and a civil penalty in the amount of \$100,000.00, pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation (a) by paying \$78,163.80 to the Commission within 14 days of the entry of this Final Judgment and (b) by relinquishing, effective immediately upon the entry of this Final Judgment, all legal and equitable right, title and interest in all of the proceeds of her sale of the stock of Nexen, Inc.

(“Nexen”) that she purchased for her account with Phillip Securities Pte Ltd. (“Phillip”) between July 19 and 20, 2012. These trades were executed in a Pershing LLC (“Pershing”) omnibus account in Phillip’s name and were among the trades attributed in the Complaint to Defendants Certain Unknown Traders in the Securities of Nexen, Inc. in an Account of Phillip Securities Pte Ltd. The total proceeds of the trades (\$488,313.82, referred to herein as the “Choo Eng Hong Frozen Funds”), are currently held by Pershing and are subject to the Court’s asset freeze Orders of July 27, 2012 (Docket No. 2) and August 20, 2012 (Docket No. 31). In partial satisfaction of Defendant’s disgorgement and penalty obligations, Pershing is hereby directed to transmit the total of \$488,313.82 of the Choo Eng Hong Frozen Funds to the Commission within 14 days after entry of this Final Judgment.

Each of Defendant and Pershing may transmit the payments pursuant to the preceding paragraph electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payments may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Each of Defendant and Pershing may also pay by certified check, bank cashier’s check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Choo Eng Hong as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment. Defendant and Pershing shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission’s

counsel in this action. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Following the payment of Defendant's disgorgement and penalty obligations to the Commission by Defendant and by Pershing as set forth above, all asset freeze obligations imposed by the Court's Orders of July 27, 2012 (Docket No. 2) and August 20, 2012 (Docket No. 31) and all document preservation obligations imposed by the Court's Orders of July 27, 2012 (Docket No. 2) and August 20, 2012 (Docket No. 31) shall terminate as to Defendant immediately, without further order of the Court.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant's Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

V.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

SO ORDERED.

Dated: May 16, 2013
New York, New York


RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-1022

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May 14, 2013

Via Email

Hon. Richard J. Sullivan
United States District Judge
United States District Court for the
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: SEC v. Well Advantage Limited, et. al., No. 12 Civ. 5786 (RJS)

Dear Judge Sullivan:

We represent the Plaintiff, Securities and Exchange Commission ("Commission"), in this action. Pursuant to the Court's Order of May 8, 2013 (DE 61), we write to explain why the proposed settlement between the Commission and Defendant Choo Eng Hong ("Choo") is fair and reasonable, and should be approved.

The Proposed Settlement

As the Court is aware, the Commission commenced this case only four days after the July 23, 2012 pre-market-open announcement that the Chinese company CNOOC Ltd. ("CNOOC") had entered into a definitive agreement to acquire Canadian energy company Nexen, Inc. ("Nexen") for approximately \$15.1 billion (the "Announcement"). The defendants included unknown foreign traders who made highly suspicious and highly profitable trades in the securities of Nexen in the days before the Announcement. The Commission also made an emergency *ex parte* application to freeze the proceeds of the trading at issue in this case. In bringing this action and seeking this emergency relief, the Commission sought to prevent the foreign traders from enjoying the profits associated with their illicit trading and thus to deter them and others from committing similar violations in the future.

The proposed settlement requires Choo, one of the formerly unknown foreign traders referenced in the Complaint, to disgorge all of the profits generated by her illicit trades and requires her to pay a substantial civil penalty. Choo is a resident and citizen of Singapore, and she works as an executive at a privately-owned, Singapore-based furniture company. As was set forth in our letter to the Court of April 30, 2013, Choo has consented to a final judgment permanently enjoining her from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and ordering her to pay disgorgement in

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the amount of \$466,477.62 and a civil penalty of \$100,000.00. The settlement does not contemplate suspensions, bars or other administrative relief against Choo because she is not associated with a United States public company or with any entity regulated by the Commission, such as a broker-dealer or an investment adviser.

The proposed disgorgement amount of \$466,477.62 represents the profits that Choo realized as a result of her pre-Announcement purchase of Nexen securities in a Phillip Securities Pte Ltd. ("Phillip") account referenced in the Complaint, as well as profits from pre-Announcement trades placed in two other accounts that came to light after the Commission filed its Complaint, largely as a result of the Commission's discussions with Choo's counsel. During the three trading days immediately preceding the Announcement, July 18, 19, and 20, 2012, Choo purchased Nexen stock for her own accounts at Phillip and UOB Kay Hian Pte Ltd., and she also purchased Nexen contracts for difference (CFDs) for an account in the name of a family member at Saxo Capital Markets. Choo sold most of these securities on the day of the Announcement or shortly thereafter, and liquidated the remainder of her Nexen positions in late August 2012. Because the proposed settlement includes the disgorgement of substantial profits that were not known at the filing of the Complaint and are not subject to the asset freeze, the proposed settlement requires Choo to forfeit all proceeds (including the profits and the principal investments made to fund the trades) of the Nexen trading in the frozen Phillip account, approximately \$488,000, and to make an additional payment of approximately \$78,000.

The Proposed Settlement is Fair and Reasonable and Should Be Approved

The Commission respectfully seeks approval of the proposed settlement. The Second Circuit has recognized a "strong federal policy favoring the approval and enforcement of consent decrees." SEC v. Wang, 944 F.2d 80, 85 (2d Cir. 1991) (quoting SEC v. Randolph, 736 F.2d 525, 529 (9th Cir.1984) ("Unless a consent decree is unfair, inadequate, or unreasonable, it ought to be approved."); see also SEC v. Citigroup Global Markets Inc., 673 F.3d 158, 164 (2d Cir. 2012) (granting the Commission's request for stay of litigation pending review of District Court's rejection of proposed settlement and noting that "the scope of a court's authority to second-guess an agency's discretionary and policy-based decision to settle is at best minimal").

As the Second Circuit recognized in Citigroup, like any litigant, the Commission considers many factors in deciding whether to settle a claim and, if so, on what terms. See Citigroup, 673 F.3d at 164 (observing that the factors involved in such an assessment "are precisely the factors that the Supreme Court has recognized as making a discretionary agency decision unsuitable for judicial review"). Among other things, the Commission assesses "how the public interest is best served," as well as "the value of the particular proposed compromise, the perceived likelihood of obtaining a still better settlement, the prospects of coming out better, or worse, after a full trial, and the resources that would need to be expended in the attempt." Id. With respect to the public interest considerations, the Commission considers, among other things, the competing demands on its limited enforcement resources and the need to deploy those limited resources in a manner most consistent with the Commission's mission of investor protection.

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As referenced above, under the terms of the proposed settlement, Choo would make full disgorgement of \$466,477.62 and pay a civil penalty of \$100,000. A substantial portion of the disgorgement is based on profits that were generated by trades that were not known when the Commission filed its Complaint and the proceeds of which are not subject to any asset freeze. As a result, unlike in the settlement approved by the Court involving defendant Well Advantage Limited and the proposed settlement involving Ren Feng, CT Prime Assets Limited and Zeng Huiyu, Choo's funds that are subject to the asset freeze, approximately \$488,000, are not sufficient to make full disgorgement and pay a penalty equivalent to the disgorgement. In fact, to make the \$566,477.62 monetary payment required by the proposed settlement, Choo has agreed to pay an additional amount of approximately \$78,000 using funds that are not subject to the asset freeze.

The proposed settlement is fair, adequate, and reasonable because it allows the Commission to obtain appropriate relief, including a penalty that sends a strong deterrent message, without expending additional resources and without assuming the risks associated with litigation and collection of monetary relief. As detailed in our April 30, 2013 letter, even if the Commission was able, after costly litigation, to obtain a judgment against Choo requiring full disgorgement and payment of a larger civil penalty, the Commission would likely face obstacles in attempting to collect any monetary relief beyond the amount of the frozen funds, including the possibility that a foreign court may view civil penalties as penal in nature and thus unenforceable. See, e.g., Lawrence Collins, Professor Lowenfeld and the Enforcement of Foreign Public Law, 42 N.Y.U. J. Int'l L. & Pol. 125, 125-29 (2009) (discussing the "almost universal principle" that the courts of a sovereign state will not enforce a "penal, revenue or other public law" of a foreign state and the application of this principle to the Exchange Act).

Although the Commission often settles insider trading claims by obtaining full disgorgement and a penalty equal to the amount of the disgorgement, the imposition of a civil penalty in an amount less than the disgorgement does not render the settlement unfair, inadequate or unreasonable. As noted above, the Commission may consider a range of factors in entering into settlements, including the costs of litigation, the best use of the Commission's resources, and the probability of achieving a better outcome. It is not uncommon for the Commission to enter into settlements that include the imposition of penalties that are less than the amount of disgorgement. In particular, the terms of the proposed settlement are consistent with other cases in which the Commission, facing similar challenges associated with litigating against foreign defendants, agreed to settle claims by obtaining civil penalties in amounts less than disgorgement and in some instances without any civil penalties. See, e.g., SEC v. Garcia, No. 10-CV-05268 (N.D. Ill.) (DE 89, entered May 2, 2011) (defendant foreign trader ordered to pay disgorgement of \$576,032.99 and a civil penalty of \$50,000); SEC v. Cavallero, No. 06-CV-3282 (N.D. Ill.) (DE 61, entered Mar. 26, 2007) (defendant foreign trader ordered to pay disgorgement of \$687,541.81, with prejudgment interest of \$23,101.41, and a civil penalty \$368,698.71); SEC v. Loomans, 05-CV-400 (N.D. Ga.) (DE 35, entered June 19, 2006) (defendant foreign trader ordered to pay disgorgement of \$285,505, with prejudgment interest of \$75,355.33, and a civil penalty of \$25,000); see also SEC v. Anticevic, No. 05-CV-6991 (KMW) (S.D.N.Y.) (DEs 227, 228, 229 and 230, entered June 20, 2012) (four foreign trader defendants

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ordered to pay disgorgement of \$735,192.80, \$524,375.75, \$835,908.15 and \$28,334.29, but no civil penalties).

In sum, the proposed resolution enables the Commission to achieve its goals of obtaining the proceeds from the illicit trades and of reinforcing the deterrence message it sent when it moved within four days of the Announcement to stop the proceeds of illegal trading from leaving the jurisdiction of the United States courts. For this reason and the reasons set forth above, the Commission respectfully requests that the Court approve the proposed settlement and enter the proposed Final Judgment as to Choo that we previously submitted to the Court.

Respectfully submitted,



Simona K. Suh
Charles D. Riely

Cc: See attached Service List

SEC v. Well Advantage Limited, et al., 12 Civ. 5786 (RJS)
Service List

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