INITIAL DECISION RELEASE NO. 651
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15544

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

In the Matter of CHINA RUITAI INTERNATIONAL HOLDINGS CO., LTD., DIAN MIN MA, GANG MA, AND JIN TIAN	INITIAL DECISION OF DEFAULT AS TO CHINA RUITAI INTERNATIONAL HOLDINGS CO., LTD. August 5, 2014

APPEARANCE: Daniel J. Wadley for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision finds that Respondent China Ruitai International Holdings Co., Ltd. (China Ruitai), violated Sections 10(b), 10A(b)(3), 13(a), and 13(b)(2)(A) of the Securities Exchange Act of 1934 (Exchange Act), and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13; grants the Division of Enforcement's (Division) Motion for Sanctions against China Ruitai (Motion); orders China Ruitai to cease and desist from committing or causing violations of the above-listed provisions; and imposes a civil penalty of $2,100,000.[1]

Procedural Background

On September 30, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against Respondents (China Ruitai) and Dian Min Ma, Gang Ma, and Jin Tian (Individual Respondents), pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

I held a telephonic prehearing conference on October 29, 2013, to address whether service of the OIP was effective on China Ruitai. The Division of Enforcement (Division) attended the prehearing conference, but China Ruitai did not. Tr. 2-3. Based on the Division's

[1] This Initial Decision does not apply to Respondents Dian Min Ma, Gang Ma, and Jin Tian.

evidence and representation at the prehearing conference, I found that China Ruitai was served with the OIP on October 11, 2013, in accordance with Commission Rule of Practice (Rule) 141(a)(2)(ii), 17 C.F.R. § 201.141(a)(2)(ii).[2] See China Ruitai Int'l Holdings Co., Admin. Proc. Rulings Release No. 1011, 2013 SEC LEXIS 3417 (Oct. 30, 2013), at *2; Tr. at 6. Out of an abundance of caution, I deemed China Ruitai's Answer due by November 4, 2013. China Ruitai Int'l Holdings Co., 2013 SEC LEXIS 3417 at *2-3. I ordered China Ruitai – if it failed to file an Answer by November 4, 2013 – to show cause on or before November 14, 2013, why this proceeding should not be determined against it due to the failure to file an Answer, appear at the prehearing conference, or otherwise defend this proceeding. Id. at *3.

China Ruitai failed to answer the OIP or show cause. I found China Ruitai in default and directed the Division to file a motion for sanctions, supported by sufficient evidence in accordance with Rapoport v. SEC, 682 F.3d 98 (D.C. Cir. 2012).[3] See China Ruitai Int'l Holdings Co., Admin. Proc. Rulings Release No. 1057, 2013 SEC LEXIS 3650, at *2-3 (Nov. 20, 2013). On December 19, 2013, the Division filed its Motion, with supporting exhibits (Div. Exs. A-N).[4] I held a second telephonic prehearing conference on March 18, 2014, and ordered

[2] At the prehearing conference, the Division confirmed that it is in the process of effecting service on the Individual Respondents under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents. Tr. 3-5. Service was completed on May 19, 2014. China Ruitai International Holdings Co., Admin. Proc. Rulings Release No. 1587, 2014 SEC LEXIS 2397 (July 7, 2014). As of the date of this Initial Decision, the Individual Respondents have not filed answers.

[3] I provided China Ruitai with notice that it may move to set aside the default pursuant to Rule 155(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.155(b). See China Ruitai Int'l Holdings Co., Admin. Proc. Rulings Release No. 1057, 2013 SEC LEXIS 3650, at *2 n.2 (Nov. 20, 2013).

[4] These exhibits are: (1) the OIP; (2) China Ruitai's Form 10-Q for the period ended March 31, 2011, filed on May 16, 2011 (Div. Ex. B); its Form 10-Q for the period ended June 30, 2011, filed on August 15, 2011 (Div. Ex. C); and its Form 10-Q for the period ended September 30, 2011, filed on November 14, 2011 (Div. Ex. D) (collectively, Quarterly Reports); (3) China Ruitai's Form 10-Q/A for the period ended June 30, 2011, filed on August 29, 2011 (Div. Ex. E); (4) Marcum Bernstein & Pinchuk LLP's (Marcum) February 29, 2012, Audit Findings and Issues Memo (Div. Ex. F); (5) three representation letters from China Ruitai to Marcum, dated May 16, 2011, August 15, 2011, and November 14, 2011, respectively, each signed by China Ruitai's chief executive officer, chief financial officer, and/or chief accounting officer (Div. Ex. G); (6) The Global Law Office's April 12, 2012, legal opinion to Taian Ruitai Cellulose Co. Ltd (now China Ruitai) (Div. Ex. H); (7) DLA Piper's April 24, 2012, legal opinion to Marcum (Div. Ex. I); (8) Marcum's May 21, 2012, letter to China Ruitai (Div. Ex. J); (9) Marcum's July 25, 2012, letter to China Ruitai (Div. Ex. K); (10) Marcum's July 27, 2012, letter to China Ruitai (Div. Ex. L); (11) Attestation of Barbara J. Volpe, Management and Program Analyst at the Commission (Div. Ex. M); and (12) China Ruitai's Form 10-K for the period ended December 31, 2011, filed on March 30, 2012 (Div. Ex. N).

the Division to file a supplementary motion for sanctions providing legal authority and/or evidentiary support relating to its request for civil penalties. China Ruitai Int'l Holdings Co., Admin. Proc. Rulings Release No. 1314, 2014 SEC LEXIS 965 (Mar. 19, 2014). On April 17, 2014, the Division filed its Supplemental Motion for Sanctions (Supplemental Motion) with a supporting exhibit consisting of a summary of trading activity in China Ruitai's stock between September 30, 2010, and December 31, 2012, derived from Yahoo Finance (Supplemental Exhibit A).

China Ruitai is in default for failing to answer the OIP, appear at the prehearing conferences, or otherwise defend this proceeding. See 17 C.F.R. §§ 201.155(a)(1)-(2), .220(f), .221(f). Accordingly, except as otherwise noted, I deem the allegations in the OIP true.

Findings of Fact

A. China Ruitai

China Ruitai, incorporated in Delaware and located in the People's Republic of China (PRC or China), is a manufacturer of deeply processed chemicals used primarily in the production of PVC, cosmetics, foods, and paints. OIP at 2. At all relevant times, China Ruitai's common stock was registered with the Commission pursuant to Exchange Act Section 12(g) and quoted on OTC Link, operated by OTC Markets Group, Inc. (formerly, "Pink Sheets") (OTC Link), under the ticker symbol "CRUI." Id. China Ruitai's chief executive officer (CEO), chief financial officer (CFO), and chief accounting officer (CAO) (collectively, Officers) reside in the PRC, and have held their respective positions since 2007. Id.

B. Related Entities

Taian Ruitai Cellulose Co., Ltd. (Taian Ruitai), located in the PRC, is a majority-owned (ninety-nine percent) subsidiary of China Ruitai and is the operational subsidiary of China Ruitai.[5] OIP at 2. China Ruitai's CEO serves as Taian Ruitai's finance manager, China Ruitai's CFO is Taian Ruitai's financial department director, and China Ruitai's CAO is a Taian Ruitai accountant. Id.

Shandong Ruitai Chemical Co., Ltd. (Shandong Ruitai), located in the PRC, is a related-party to China Ruitai and holds one percent of the capital stock of Taian Ruitai. Id. Shandong Ruitai is one-hundred percent owned by China Ruitai's president and its CEO. Id. Shandong Ruitai is a dealer of hot steam, which it sells to Taian Ruitai. Id.

C. China Ruitai's Misconduct and Auditor's Resignation

From approximately January to December 2011, China Ruitai orchestrated a scheme to fraudulently obtain up to $40 million in bank financing using falsified documents. OIP at 3. China Ruitai, through its subsidiary, Taian Ruitai, falsified purchase orders to purchase steam

[5] According to China Ruitai's Quarterly Reports, China Ruitai is a holding company, whose business (along with another entity) is to hold an equity interest in Taian Ruitai. Div. Ex. B at 5; Div. Ex. C at 5; Div. Ex. D at 7.

from Shandong Ruitai. Id. Aided by the cooperation of Shandong Ruitai, Taian Ruitai obtained invoices from Shandong Ruitai for the fake purchase orders. Id.; see Div. Ex. J at 1. Taian Ruitai then presented the fake invoices and purchase orders to various banks to obtain bank acceptance notes. OIP at 3. Per the terms of the acceptance notes, China Ruitai deposited between thirty and one hundred percent of the invoice amount with the bank, and the bank paid the stated invoice amount to Shandong Ruitai. Id. The amounts that China Ruitai placed on deposit with the banks were held in reserve until China Ruitai repaid the bank acceptance notes. Id.

After Shandong Ruitai received funds from the banks, Shandong Ruitai typically provided the funds to Taian Ruitai to be used as operating capital. Id. At other times, Shandong Ruitai retained a portion of the funds for its own operational needs. Id. In either scenario, the scheme was effectuated by the efforts of China Ruitai as the originator of the purchase orders. Id.; see Div. Ex. J. at 1.

During the time period of the scheme, China Ruitai filed Forms 10-Q for the periods ended March 31, 2011, June 30, 2011, and September 30, 2011 (collectively, 2011 Quarterly Reports), and a Form 10-Q/A for the period ended June 30, 2011 (Amendment). OIP at 3; Div. Exs. B through E.

In its 2011 Quarterly Reports and Amendment, China Ruitai did not disclose its obligations to the banks, the scheme it was utilizing to provide working capital, and the risks associated with the ongoing scheme. OIP at 3; see Div. Exs. B through E; cf. Div. Ex. F at 1-3; Div. Ex. J at 1. As a result of the scheme, China Ruitai's related-party obligations to Shandong Ruitai increased over $40 million, or over 1,300 percent, from December 31, 2010, to December 31, 2011.[6] Div. Ex. F at 1; Div. Ex. J at 1. China Ruitai's first Form 10-Q of 2011 reported a balance of nearly $8 million in related-party obligations payable to Shandong Ruitai. Div. Ex. B at 2, 13. Its second Form 10-Q of 2011 reported a balance payable to Shandong Ruitai of over $24 million. Div. Ex. C at 2, 14. And its third Form 10-Q of 2011 reported a balance payable to Shandong Ruitai of over $34.5 million. Div. Ex. D at 4, 16.

As of September 30, 2011, China Ruitai's related-party obligations to Shandong Ruitai represented over thirty-seven percent of its total liabilities. Div. Ex. D at 4; see OIP at 3 (says over thirty-six percent). The failure to disclose the obligations to the banks and the nature of the activity to obtain bank financing misrepresented the actual operations, obligations, solvency, and liquidity of China Ruitai.[7] OIP at 3. In footnotes to the financial statements contained in its

[6] Although the OIP alleges that the increase in related-party obligations was 1,600 percent, that percentage is not supported by the evidence and is not the figure adopted in the Division's Motion. Compare Motion at 4, with OIP at 3; Div. Ex. F at 1; Div. Ex. J at 1.

[7] The OIP alleges, without further explanation, that "[t]he misstatements made it appear that China Ruitai was meeting its working capital requirements with cash flows generated from business activities, rather than financing from banks." OIP at 3. It is not clear from the OIP or an independent review of the 2011 Quarterly Reports how misstatements about China Ruitai's debt financing relate to misleading investors to believe that the company was meeting its

2011 Quarterly Reports, China Ruitai described the resulting obligations as only related-party notes payable that were "non-interest bearing for the purpose of financing the Company's operations due to a lack of working capital, and have no fixed terms of repayment." Id.; Div. Ex. B at 13; Div. Ex. C at 14; Div. Ex. D at 16. These statements were false and misleading because they failed to disclose the nature and terms of the obligations to the banks. OIP at 3. Furthermore, the loans themselves constituted an undisclosed risk to the company, in view of their illegality. Id.; see Div. Exs. H through L.

China Ruitai's CEO and CFO each signed China Ruitai's Quarterly Reports, as well as certifications for those filings. OIP at 3; Div. Ex. B at 24 and Cert. Exs. 31.1 through 32.2; Div. Ex. C at 26 and Cert. Exs. 31.1 through 32.2; Div. Ex. D at 29 and Cert. Exs. 31.1 through 32.2. The Quarterly Reports incorrectly stated that they did not "contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report." OIP at 3-4; Div. Ex. B at Cert. Exs. 31.1 through 32.2; Div. Ex. C at Cert. Exs. 31.1 through 32.2; Div. Ex. D at Cert. Exs. 31.1 through 32.2.

The Officers facilitated China Ruitai's violations by perpetuating the illegal scheme and directly and indirectly filing or causing to be filed with the Commission the 2011 Quarterly Reports and Amendment that were inaccurate and misleading. OIP at 4. In particular, China Ruitai's CEO and CFO signed certifications for those reports and attested to their accuracy. Id.

During fiscal year 2011, China Ruitai retained the independent registered public accounting firm of Marcum Bernstein & Pinchuk LLP (Marcum), a New York CPA firm with offices in the PRC. Id. Marcum performed the review procedures for each of the first three quarters of 2011. Id. In each of these quarters, China Ruitai provided to Marcum management representation letters signed by the Officers. Id. The representation letters included misleading statements that: (1) management had no knowledge of any fraud; (2) all related-party transactions had been properly disclosed; and (3) there had been no violations of laws. Id.; see Div. Ex. G. These statements were misleading because China Ruitai's scheme was a violation of PRC laws, and the description of the related-party obligations misrepresented the true nature of the activity. OIP at 4; see Div. Exs. H through L.

Marcum also performed audit procedures in preparation for the filing of China Ruitai's Form 10-K. OIP at 4. As part of these audit procedures, Marcum performed substantive and analytical procedures on the related-party balances between Taian Ruitai and Shandong Ruitai. Id. Marcum made repeated inquiries regarding the related-party balances to employees of China Ruitai, but the employees were uncooperative. Id. Despite the lack of cooperation, Marcum identified at least $66.7 million in potentially fake purchase orders. Id. When confronted with this information, China Ruitai's CFO admitted that the purchase orders and corresponding

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working capital requirements with cash flows generated from business activities. The 2011 Quarterly Reports make apparent that China Ruitai had negative working capital and a significant decrease in cash flows from operating activities compared to 2010, and an increase in cash flow generated from financing through related-party notes. Div. Ex. B at 4, 21; Div. Ex. C at 4, 23-24; Div. Ex. D at 6, 26.

invoices between Shandong Ruitai and Taian Ruitai were fictitious and that "no real deal occurred between the two entities." Div. Ex. F at 2; see OIP at 4. In a February 2012 audit findings and issues memo, Marcum concluded that if these facts were true, China Ruitai's behavior violated Article 10 of the PRC's Negotiable Instruments Law, which provides that: "The draft, acquisition and transfer of a negotiable instrument shall follow the principle of authenticity and credibility and be treated as a real act of trading or debt payment." Div. Ex. F at 3. Marcum expressed concern about exposure under the PRC's Criminal Law and doubt of the integrity of China Ruitai's management. Id.

As a result of its discovery, Marcum demanded that China Ruitai obtain a legal opinion regarding the legality of the above-described conduct in relation to PRC law. OIP at 4.; see Div. Ex. J at 2. China Ruitai, through its subsidiary Taian Ruitai, obtained a legal opinion from counsel in the PRC, the Global Law Office, which concluded that the conduct violated Article 10 of the PRC's Negotiable Instruments Law. OIP at 4-5; Div. Ex. H. The Global Law Office, however, stated that PRC laws "do not provide specific penalties for this behavior, so there's no material responsibility under the Negotiable Instruments Law." Div. Ex. H. at 1. For risks under Article 175 of the PRC's Criminal Law, the Global Law Office stated:

> [Taian] Ruitai had signed series Acceptance Agreements with cooperating banks before transferring bank acceptances to Shandong Ruitai . . . , which shows [Taian] Ruitai had no fraud intention as the banks knew [Taian] Ruitai's purpose and process of using the acceptances. What's more, the Basic Credit Report shows, up to March 26, 2012, [Taian] Ruitai had no outstanding non-performing loans, so no serious loss is caused to the banks, and no serious consequence had been resulted.

Id. at 1-2.

Marcum obtained a separate legal opinion from Chinese counsel associated with the international law firm DLA Piper, which also concluded that China Ruitai violated Article 10 of the PRC's Negotiable Instruments Law. OIP at 5; Div. Ex. I. Although DLA Piper agreed that the Negotiable Instruments Law provides no specific penalties for China Ruitai's violation, it opined that China Ruitai could be civilly liable if it failed to repay the bank acceptance notes. Div. Ex. I at 1-2. DLA Piper reasoned that if a lawsuit were filed against China Ruitai, the chance of China Ruitai's success in such a case was "unlikely to be high." Id. at 2. DLA Piper further opined that, under Article 175(I) of the PRC's Criminal Law, if China Ruitai continued to perform its obligations to the banks, with no loss to the banks, then its potential criminal liability under Article 175(I) should be relatively low. Id. DLA Piper also opined that China Ruitai's conduct may constitute a violation of Article 52 of the PRC's Contract Law, under which a contract is invalid in circumstances where the parties intend to conceal an illegal purpose under the guise of a legitimate transaction. Id. at 3. DLA Piper recommended disclosure of the details of the underlying transactions in China Ruitai's financial statements. Id. It also recommended that the total amount of the notes, less the deposit paid by China Ruitai, should be booked as a payable. Id.

Marcum reported its concerns to China Ruitai's board of directors in a May 21, 2012, letter, pursuant to Exchange Act Section 10A(b)(1), which requires the auditor to inform management that it has information indicating an illegal act has or may have occurred. OIP at 5; Div. Ex. J. Among other issues, Marcum reiterated its understanding that the purchase orders underlying the bank loans (and, ultimately, the related-party notes payable to Shandong Ruitai) were fake, and stated that it was unable to satisfactorily corroborate the fact asserted by the Global Law Office that the banks actually knew that there were no real transactions behind the notes. Div. Ex. J at 1-2. The Officers all received the letter. OIP at 5. China Ruitai failed to take any remedial action in response to the letter. Id.

On July 25, 2012, Marcum issued a notice to China Ruitai, pursuant to Exchange Act Section 10A(b)(2), indicating an illegal act had occurred and that failure of the company to take remedial action would warrant resignation of Marcum as the independent registered public accountant of China Ruitai. OIP at 5; Div. Ex. K. The notice informed China Ruitai that China Ruitai was required to notify the Commission no later than one business day after it received Marcum's report, pursuant to Exchange Act Section 10A(b)(3). OIP at 5; Div. Ex. K. Once again, China Ruitai failed to report the matter to the Commission. OIP at 5.

On July 27, 2012, Marcum sent a letter, pursuant to Exchange Act Section 10A(b)(3), to China Ruitai, and sent a copy of it to the Commission. Id. at 5; Div. Ex. L. That letter provided notice to China Ruitai's Officers that Marcum was resigning from the audit engagement, effective immediately. OIP at 5; Div. Ex. L at 1. The letter also informed China Ruitai that Marcum no longer wished to be associated with the Quarterly Reports. OIP at 5; Div. Ex. L. The letter further requested that China Ruitai file a Form 8-K disclosing to the Commission and users of the Quarterly Reports that Marcum should no longer be associated with the Quarterly Reports, and that such financial statements were "not reviewed" in accordance with Statement of Auditing Standards No. 100, as required by Rule 10-01(d) of Regulation S-X promulgated under the Exchange Act. OIP at 5; Div. Ex. L at 2.

To date, China Ruitai has not complied with its obligation to report the matter to the Commission pursuant to Exchange Act Section 10A(b)(3). OIP at 5. China Ruitai failed to respond to Marcum's requests and cut off contact with Marcum. Id. In addition, China Ruitai did not file a Form 8-K to announce the resignation of its auditor. Id.; see Div. Ex. M.

Since Marcum resigned as China Ruitai's auditor, China Ruitai has failed to file its required periodic reports. China Ruitai's last filing was a Form NT 10-K for the period ended December 31, 2011, filed on March 30, 2012, notifying the Commission that it was unable to file its Form 10-K on time. OIP at 5; see Div. Ex. N. China Ruitai's last periodic report filed with the Commission was its Form 10-Q for the period ended September 30, 2011, filed on November 14, 2011. OIP at 5; see Div. Ex. D. As a result, China Ruitai is delinquent with at least its 2011 and 2012 Forms 10-K, as well as Forms 10-Q for 2012 and 2013. OIP at 5; see Div. Ex. M.

D. Exchange Act 12(j) Proceeding

On September 30, 2013, the Commission issued an Order Instituting Administrative Proceedings against China Ruitai, pursuant to Exchange Act Section 12(j), alleging that China

Ruitai had a class of securities registered with the Commission pursuant to Section 12(g) of the Exchange Act and was delinquent in its current and periodic filings, in violation of Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1, 13a-11, and 13a-13. China Ruitai Int'l Holdings Co., Exchange Act Release No. 70580, 2013 SEC LEXIS 3090 (Sept. 30, 2013).

China Ruitai defaulted due to its failure to file an Answer, appear at the prehearing conferences, respond to an order to show cause, or otherwise defend the proceeding. China Ruitai Int'l Holdings Co., Initial Decision Release No. 530, 2013 SEC LEXIS 3694, at *2-3 (Nov. 22, 2013). Accordingly, pursuant to Commission Rule of Practice 155(a), I deemed the allegations true and issued an initial decision of default revoking the registration of China Ruitai's registered securities based on its failure to timely file required current and periodic reports with the Commission, in violation of Exchange Act Section 13(a) and Rules 13a-1, 13a-11, and 13a-13. Id. at *1-3, *10-11. On January 16, 2014, the Commission issued a notice that the initial decision had become final. China Ruitai Int'l Holdings Co., Exchange Act Release No. 71323, 2014 SEC LEXIS 162.

Conclusions of Law

A. Exchange Act Section 10(b) and Exchange Act Rule 10b-5

To establish a violation of Exchange Act Section 10(b) and Rule 10b-5 (collectively, Section 10(b)), the Division must prove that China Ruitai made: (1) a misrepresentation or omission; (2) of material fact; (3) with scienter; (4) in connection with the purchase or sale of securities; (5) by jurisdictional means.[8] 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; see VanCook v. SEC, 653 F.3d 130, 138 (2d Cir. 2011). Among other requirements, Section 10(b) prohibits an issuer from making public statements that are false or that fail to include material facts necessary to make the statements made, in light of the circumstances under which they are made, not misleading. 17 C.F.R. § 240.10b-5. "[C]orporations have a duty to disclose all facts necessary to ensure the completeness and accuracy of their public statements." In re Marsh & McLennan Co. Sec. Litig., 501 F. Supp. 2d 452, 469 (S.D.N.Y. 2006).

1. Misrepresentations and Omissions

In its 2011 Quarterly Reports, China Ruitai misrepresented and omitted facts regarding its related-party obligations to Shandong Ruitai, and in its Amendment, China Ruitai omitted facts regarding such obligations. OIP at 3-4; see Div. Exs. B through E. As a result of its scheme to obtain bank financing, China Ruitai's related-party obligations to Shandong Ruitai increased over $40 million from December 2010 to December 2011. Div. Ex. F at 1; Div. Ex. J

[8] Unlike a private plaintiff, the Division need not prove that any investor relied on a respondent's misrepresentation or omission. See United States v. Vilar, 729 F.3d 62, 88-89 & n.23 (2d Cir. 2013) (collecting circuit case-law); Jay Houston Meadows, 52 S.E.C. 778, 786 & n.22 (1996), aff'd, 119 F.3d 1219 (5th Cir. 1997). The scope of Rule 10b-5 is coextensive with Section 10(b); therefore, I use "Section 10(b)" throughout the remainder of this Initial Decision to refer to both the statute and the rule. See SEC v. Zandford, 535 U.S. 813, 816 n.1 (2002); United States v. O'Hagan, 521 U.S. 642, 651 (1997).

at 1; see OIP at 3. In its 2011 Quarterly Reports, China Ruitai disclosed its related-party obligations to Shandong Ruitai, reporting that by September 30, 2011, those obligations totaled over $34 million, or thirty-six percent of China Ruitai's liabilities. OIP at 3; Div. Ex. B at 2, 13; Div. Ex. C at 2, 14; Div. Ex. D at 4, 16. However, China Ruitai: (1) inaccurately described the resulting obligations as only related-party notes payable that were "non-interest bearing for the purpose of financing the Company's operations due to a lack of working capital and have no fixed terms of repayment"; (2) failed to disclose its obligations to the banks and the nature of the illegal activity to obtain bank financing, namely that it obtained such financing based on fake purchase contracts; and (3) failed to disclose that such bank loans could result in risk to the company if their illegal nature was exposed or challenged. OIP at 3-5; Div. Ex. F at 1-3; Div. Ex. J; cf. Div. Ex. I.

2. Materiality

China Ruitai's misrepresentations and omissions were material because "there is 'a substantial likelihood that the disclosure of the [misstated or] omitted fact[s] would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.'" Matrixx Initiatives, Inc. v. Siracusano, 131 S. Ct. 1309, 1318 (2011) (quoting Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988)). Staff Accounting Bulletin (SAB) 99, issued by the Staff of the Commission, provides guidance regarding materiality determination for both quantitative and qualitative factors. See SEC SAB No. 99, 64 Fed. Reg. 45150 (Aug. 19, 1999) (codified at 17 C.F.R. pt. 211). Certain qualitative factors considered include the concealment of an unlawful transaction and the significance of the misstatement in relation to the company's operations. See ECA & Local 134 IBEW Joint Pension Trust v. JP Morgan Chase Co., 553 F.3d 187, 197-98 (2d Cir. 2009); SAB No. 99 at 45152 (1999).

China Ruitai's related-party notes totaled millions of dollars, represented a significant portion of its total liabilities, and were the result of an undisclosed and unlawful transaction. As of March 31, 2011, China Ruitai's related-party notes payable balance was almost $8 million, which was about 9.7 percent of its total liabilities. Div. Ex. B at 2. As of June 30, 2011, China Ruitai's related-party notes payable balance was around $24.3 million, which was about twenty-five percent of its total liabilities. Div. Ex. C at 2. As of September 30, 2011, China Ruitai's related-party notes payable balance was around $34.7 million, which was about 36 percent of its total liabilities. Div. Ex. D at 4. Both the Global Law Office and DLA Piper found that China Ruitai's conduct violated Article 10 of the PRC's Negotiable Instruments Law, and DLA Piper additionally found that China Ruitai could be held liable under Article 175(I) of the PRC's Criminal Law, and its conduct may also constitute a violation of Article 52 of the PRC's Contract Law. OIP at 4-5; Div. Exs. H, I. A reasonable investor would have viewed China Ruitai's illegal conduct, in obtaining bank financing that was an increasingly larger percentage of China Ruitai's total liabilities, as significantly altering the total mix of information made available.

Further, Item 404 of Regulation S-K requires registrants to "[d]escribe any transaction, since the beginning of the registrant's last fiscal year . . . in which the registrant was or is to be a participant and the amount involved exceeds $120,000, and in which any related person had or will have a direct or indirect material interest" in Forms 10-K. 17 C.F.R. § 229.404(a).

Similarly, Statement of Financial Accounting Standards Number 57 provides that a public company's "[f]inancial statements shall include disclosures of material related-party transactions." Related Party Disclosures, Statement of Fin. Accounting Standards No. 57 (Fin. Accounting Standards Bd. Mar. 1982). "[D]isclosure is the overriding principle" governing related-party transactions because, although "related party transactions are not inherently bad, they have proven to be an easy and effective way for perpetrators of fraud and money laundering schemes to misstate the economic substance and reality of financial transactions." In re Am. Preferred Prescription, Inc., Bankr. No. 893-84170-478, 1997 WL 158401, at *3 n.11 (Bankr. E.D.N.Y. Mar. 21, 1997) (discussing such transactions in bankruptcy context); accord Zagami v. Natural Health Trends Corp., 540 F. Supp. 2d 705, 711 (N.D. Tex. 2008) (discussing such transactions in the securities fraud context).

Full disclosure of the true nature of the related-party notes was necessary to give investors an accurate assessment of the company's financial condition, especially given that doubts about the company's ability to continue as a going concern due to lack of working capital were represented as being dependent on, among other things, obtaining debt financing. Div. Ex. B at 5; Div. Ex. C at 5-6; Div. Ex. D at 7-8. By representing in its 2011 Quarterly Reports that the company's financing activities significantly increased through use of related-party notes, China Ruitai misleadingly made it appear that it obtained legitimate debt financing to make up for its otherwise negative operating cash flows. Div. Ex. B at 4, 13, 21; Div. Ex. C at 4, 14, 23-24; Div. Ex. D at 6, 16, 26. It did not disclose that such notes were based on underlying bank loans that had been illegally obtained through fictitious purchase orders, which could result in risks to the company if exposed or challenged by the banks or others, especially if China Ruitai failed to repay the bank loans. OIP at 3; see Div. Ex. I; Div. Ex. J. Even if China Ruitai's liability for such illegally obtained bank financing under PRC law was low, as stated in the legal opinions by the Global Law Office and DLA Piper,[9] a reasonable investor would still find it significant that the company's debt financing was largely the product of fraud and risky bank financing.

In sum, by inaccurately describing and failing to disclose facts in its public filings regarding the true nature and activity underlying its related-party obligations that totaled millions of dollars, China Ruitai misrepresented and omitted material facts regarding its actual operations, debt obligations, solvency, liquidity, and financial risks. OIP at 3. A reasonable investor would view such information as material in deciding whether to invest in the company. See SEC v. Murphy, 626 F.2d 633, 653 (9th Cir. 1980) ("[T]he materiality of information relating to financial condition, solvency and profitability is not subject to serious challenge."); see also SEC v. Monterosso, No. 13-10341, 2014 WL 2922670, at *9 (11th Cir. June 30, 2014) ("revenue overstatements would have been important to any reasonable shareholder").

3. Scienter

China Ruitai acted with scienter, a "mental state embracing intent to deceive, manipulate, or defraud." Aaron v. SEC, 446 U.S. 680, 686 n.5 (1980) (internal quotation marks omitted). A finding of recklessness satisfies the scienter requirement. See SEC v. McNulty, 137 F.3d 732,

[9] See Div. Exs. H and I.

741 (2d Cir. 1998); David Disner, 52 S.E.C. 1217, 1222 & n.20 (1997). In the context of securities fraud, recklessness is "highly unreasonable" conduct, "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) (quoting Rolf v. Blyth, Eastman Dillon & Co., 570 F.2d 38, 47 (2d Cir. 1978)) (omission in original). Proof of scienter may be inferred from circumstantial evidence. Herman & MacLean v. Huddleston, 459 U.S. 375, 390-91 n.30 (1983).

Here, China Ruitai's Officers knew, or were reckless in not knowing, that the bank financing was obtained fraudulently and illegally. OIP at 3-4. Both China Ruitai's CEO and CFO signed China Ruitai's Quarterly Reports, as well as certifications for those filings. Id. at 3. In response to Marcum's inquiries regarding the purchase contracts underlying China Ruitai's bank loans, the CFO was unable to provide evidence confirming the existence of real purchases or sales between China Ruitai and Shandong Ruitai; additionally, he admitted that such purchase orders were fictitious. Div. Ex. F at 2-3; Div. Ex. J at 1; OIP at 4. Further, China Ruitai's CEO is a co-owner of Shandong Ruitai and thus would have had access to information concerning the true nature of the purchase orders. See OIP at 2. Marcum was unable to satisfactorily corroborate the fact, asserted by the Global Law Office apparently based on information supplied by China Ruitai, that the banks actually knew that there were no real transactions behind the notes. Div. Ex. J at 1-2. A reasonable inference is that China Ruitai provided false information not only to the banks, but also to its attorneys and auditor. Thus, China Ruitai's Officers were at least reckless in publishing financial statements in China Ruitai's 2011 Quarterly Reports and Amendment when they knew facts or had access to information suggesting that those statements were inaccurate, false, and misleading. See SEC v. Pirate Investor LLC, 580 F.3d 233, 243 (4th Cir. 2009) (citing Aldridge v. A.T. Cross Corp., 284 F.3d 72, 83 (1st Cir. 2002); Fla. State Bd. of Admin. v. Green Tree Fin. Corp., 270 F.3d 645, 665 (8th Cir. 2001)); Novak, 216 F.3d at 308-09. Their scienter is imputable to China Ruitai. See Clarke T. Blizzard, 57 S.E.C. 696, 708 & n.16 (2004) (imputing scienter to company from individuals who controlled it and had knowledge of wrongdoing).

4. "In Connection" with the Purchase or Sale of Securities

The misrepresentations and omissions in China Ruitai's 2011 Quarterly Reports and Amendment were "in connection with" the purchase or sale of domestic securities. See 15 U.S.C. § 78j(b); Morrison v. Nat'l Australia Bank Ltd., 130 S. Ct. 2869, 2884 (2010) ("[T]he focus of the Exchange Act is not upon the place where the deception originated, but upon purchases and sales of securities in the United States.");[10] cf. China Ruitai Int'l Holdings Co., 2013 SEC LEXIS 3694, at *3 (China Ruitai's common stock quoted on OTC Link operated by

[10] The Dodd-Frank Wall Street Reform and Consumer Protection Act effectively reversed Morrison in the context of Commission enforcement actions. Exchange Act Section 27(b) provides the Commission with jurisdiction to bring an action alleging a violation of the antifraud provisions involving "(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States." 15 U.S.C. § 78aa(b).

OTC Markets Group Inc.); SEC v. Ficeto, 839 F. Supp. 2d 1101, 1112 (C.D. Cal. 2011) (Section 10(b) applies with equal force to market manipulation on national exchanges and the domestic over-the-counter market). The Supreme Court has broadly construed the phrase "in connection with" under Section 10(b); the requisite showing does not require deception of an identifiable purchaser or seller, but rather that the fraud coincides with a securities transaction. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit, 547 U.S. 71, 85 (2006) (citing United States v. O'Hagan, 521 U.S. 642, 651, 658 (1997), and SEC v. Zandford, 535 U.S. 813, 819-20, 822 (2002)). Where the fraud alleged involves the public dissemination of information in public filings with the Commission, the "in connection with" element is generally met by proof of the means of its dissemination and the materiality of the misrepresentation or omission. See SEC v. Wolfson, 539 F.3d 1249, 1262 (10th Cir. 2008); Semerenko v. Cendant Corp., 223 F.3d 165, 176 (3d Cir. 2000); SEC v. Rana Research, Inc., 8 F.3d 1358, 1362 (9th Cir. 1993); SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1171 (D.C. Cir. 1978); SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 860-62 (2d Cir. 1968) (en banc).

China Ruitai's public filings, like all reports filed with the Commission, were designed to reach investors and are documents upon which a reasonable investor would rely in deciding whether to purchase its securities, and as discussed supra, the information was material at the time of dissemination. See Wolfson, 539 F.3d at 1262-63; SEC v. Benson, 657 F. Supp. 1122, 1131 (S.D.N.Y. 1987); Rita J. McConville, 58 S.E.C. 596, 618-19 (2005), pet. denied, 465 F.3d 780 (7th Cir. 2006).

5. Jurisdictional Means

Lastly, Section 10(b)'s jurisdictional element is satisfied because the misrepresentations and omissions relate to China Ruitai's 2011 Quarterly Reports and Amendment, which were filed with the Commission by electronic filing, through the telephone lines or otherwise across state or international lines using interstate commerce. See Rita J. McConville, 58 S.E.C. at 619-20.

B. Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered under Exchange Act Section 12 to file annual and quarterly reports with the Commission. 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, .13a-13. An issuer violates these provisions if it files reports that contain materially false or misleading information. SEC v. Kalvex, Inc., 425 F. Supp. 310, 315-16 (S.D.N.Y. 1975); Russell Ponce, 54 S.E.C. 804, 812 n.23 (2000), pet. denied, Ponce v. SEC, 345 F.3d 722 (9th Cir. 2003). Exchange Act Rule 12b-20 requires that periodic reports filed with the Commission contain further material information "as may be necessary to make the required statements, in the light of the circumstances under which they are made[,] not misleading." 17 C.F.R. § 240.12b-20; SEC v. Falstaff Brewing Corp., 629 F.2d 62, 72 (D.C. Cir. 1980). In addition, under Exchange Act Rule 13a-11, an issuer must file current reports on Form 8-K, which requires disclosure of an auditor's resignation within four business days of such resignation. 17 C.F.R. § 240.13a-11; Form 8-K (SEC Form 873), General Instructions B.1, Item 4.01. No showing of scienter is necessary to establish a violation of these provisions. See McNulty, 137 F.3d at 740-741; SEC v. Wills, 472 F. Supp. 1250, 1268 (D.D.C.

1978); Gregory M. Dearlove, CPA, Exchange Act Release No. 57244 (Jan. 31, 2008), 92 SEC Docket 1867, 1915, pet. denied, 573 F.3d 801 (D.C. Cir. 2009) (en banc)

As previously discussed, China Ruitai's 2011 Quarterly Reports and Amendment contained materially false and/or misleading statements. This misconduct violated Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-13. Moreover, China Ruitai violated Exchange Act Rule 13a-11 by its failure to timely report Marcum's resignation in a Form 8-K. See also China Ruitai Int'l Holdings Co., 2013 SEC LEXIS 3694 (describing China Ruitai's failure to file any periodic reports since it filed its Form 10-Q for the period ended September 30, 2011).

C. Exchange Act Section 13(b)(2)(A)

Exchange Act Section 13(b)(2)(A) requires China Ruitai, an issuer registered with the Commission pursuant to Exchange Act Section 12(g), to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." 15 U.S.C. § 78m(b)(2)(A). Just as the false and misleading financial statements contained in China Ruitai's 2011 Quarterly Reports and Amendment violated Exchange Act Section 10(b), they also violated Section 13(b)(2)(A). See Ponce, 345 F.3d at 736-37 (Exchange Act 13(b)(2) liability predicated on Exchange Act Section 10(b) violation for financial misstatements in annual and quarterly reports); SEC v. Black, No. 04-cv-7377, 2008 WL 4394891, at *15 (N.D. Ill. Sept. 24, 2008) (financial misstatements contained in Forms 10-K established Section 13(b)(2)(A) violation).

D. Exchange Act Section 10A(b)(3)

Under Exchange Act Section 10A(b)(3), China Ruitai was required, upon receipt of Marcum's report that an illegal act had occurred, to "inform the Commission by notice not later than 1 business day after the receipt of such report" and to furnish Marcum "with a copy of the notice furnished to the Commission." 15 U.S.C. § 78j-1(b)(3). No showing of scienter is necessary to establish a Section 10A violation. See SEC v. Solucorp Indus., Ltd., 197 F. Supp. 2d. 4, 10-11 (S.D.N.Y. 2002).

Pursuant to Exchange Act Section 10A(b)(1), Marcum submitted its report to China Ruitai's management and board of directors on May 21, 2012, reporting that it had information that an illegal act had or may have occurred. See Div. Ex. J. After China Ruitai failed to take any remedial action in response to the letter, on July 25, 2012, pursuant to Exchange Act Section 10A(b)(2), Marcum issued a notice to China Ruitai's management and board of directors, warning that a failure to respond would warrant Marcum's resignation as China Ruitai's independent registered public accountant. See Div. Ex. K. On July 27, 2012, after failing to receive a response from China Ruitai, Marcum issued a letter, pursuant to Exchange Act Section 10A(b)(3), to China Ruitai with a copy sent to the Commission, resigning from the audit engagement. See Div. Ex. L. That letter also requested that China Ruitai file a Form 8-K disclosing that Marcum was no longer associated with the first three of China Ruitai's 2011 Quarterly Reports and Amendment. Id. As a result of its failure to notify the Commission, and furnish Marcum with a copy of that notice, upon receipt of Marcum's July 25, 2012, report, China Ruitai violated Exchange Act Section 10A(b)(3).

Sanctions

The Division requests a cease-and-desist order and third-tier civil penalties against China Ruitai for each violation. Motion at 10-17.

A. Cease-and-Desist Order

Under Exchange Act Section 21C, the Commission may order a person found to be violating or to have violated a provision of the Exchange Act or any rule thereunder to cease and desist from such violations. 15 U.S.C. § 78u-3(a). Although there must be some likelihood of future violations whenever the Commission issues a cease-and-desist order, the required showing is "significantly less than that required for an injunction." KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1185, 1191 (2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002). Indeed, absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. Id. at 1185, 1191.

In evaluating whether to issue a cease-and-desist order, the Commission considers the risk of future violations along with "the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of [its] conduct, and the respondent's opportunity to commit future violations." Id. at 1192. In addition, the Commission considers "whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." Id. The Commission weighs these factors in light of the entire record, and no one factor is dispositive. Id.

China Ruitai's violations are serious because it conducted multiple fraudulent transactions and misrepresented these transactions to its auditor, investors, and in filings with the Commission. The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." Peter Siris, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (internal quotation marks omitted). Additionally, China Ruitai's failure to comply with the reporting provisions is serious because these provisions are central to the Exchange Act. The purpose of periodic reporting is to supply investors with current and accurate financial information about an issuer so that they may make sound investment decisions. Gateway Int'l Holdings, Inc., Exchange Act Release No. 53907 (May 31, 2006), 88 SEC Docket 430, 441. The seriousness of China Ruitai's violations is further underscored by the fact that it failed to report Marcum's resignation on Form 8-K, despite being notified that Marcum had resigned following an alleged illegal act that the company failed to remedy.

China Ruitai's violations are recurrent in that it repeatedly filed materially false and misleading quarterly reports throughout 2011; failed to correct these misleading statements, even after the resignation of its auditor; and, as found in the Section 12(j) proceeding, it repeatedly failed to timely file required current and periodic reports. As previously discussed, China Ruitai

acted with scienter in violating the anti-fraud provisions, though a finding of scienter is not required for Exchange Act Sections 10A(b)(3), 13(a), and 13(b)(2)(A) and Rules 12b-20, 13a-1, 13a-11, and 13a-13. China Ruitai has provided no assurances against future violations, nor recognized the wrongful nature of its conduct. China Ruitai's opportunity to commit future violations is low as the registration of its securities has already been revoked. See China Ruitai Int'l Holdings Co., 2013 SEC LEXIS 3694.

China Ruitai's violations occurred as recently as 2013; the anti-fraud violations occurred in 2011 while the reporting requirement violations occurred from 2011-2013. While the degree of harm to investors is difficult to quantify, as discussed in more detail below, I find that investors suffered substantial loss or risk of substantial loss. The degree of harm to the marketplace is high, as an efficient and honest market requires accurate information to be distributed to investors. See Basic Inc. v. Levinson, 485 U.S. 224, 230 (1988). As noted below, I am also imposing a civil penalty of $2,100,000.

Applying these factors to the present case, each of the violations independently calls for cease-and-desist relief. Although a lack of opportunity to commit future violations tends to counsel against relief, all the other factors, especially the seriousness of the violations, China Ruitai's failure to appreciate that seriousness, and particularly, the forward-looking effect to be served by the cease-and-desist order, weigh in favor of imposition of a cease-and-desist order.

Accordingly, a cease-and-desist order is appropriate.

B. Civil Penalty

Under Exchange Act Section 21B, the Commission is authorized to impose a civil penalty in a cease-and-desist proceeding where, as here, the respondent has violated the Exchange Act or rules thereunder. See 15 U.S.C § 78u-2(a)(2). A three-tier system establishes the maximum civil money penalty that may be imposed for each violation found: A first-tier penalty may be imposed for each statutory violation. A second-tier penalty is permissible where the respondent's unlawful act or omission involves fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. A third-tier penalty involves misconduct where (A) such state of mind is present (first prong), and (B) the misconduct directly or indirectly (1) resulted in substantial losses, (2) created a significant risk of substantial losses to other persons, or (3) resulted in substantial pecuniary gain to the person who committed the misconduct (second prong). 15 U.S.C § 78u-2(b). The Commission must determine how many violations occurred to impose civil penalties under the statute. See Rapoport, 682 F.3d at 108.

Here, the Division seeks a third-tier penalty against China Ruitai for each of the following five violations: its four Commission filings (the 2011 Quarterly Reports and Amendment) that contained material misrepresentations and/or omissions, and its failure to file a required Form 8-K.[11] Motion at 17. The first prong for assessing a third-tier penalty is easily

[11] The Division's Motion seeks penalties pursuant to Section 20(d) of the Securities Act of 1933 (Securities Act) and Exchange Act Sections 21(d)(3)(A) and (B), which authorize the Commission to impose penalties if a court finds that provisions of the Exchange Act or a cease-

met for all five violations. As noted, China Ruitai acted with scienter in making material misrepresentations and/or omissions in the 2011 Quarterly Reports and Amendment. Also, although Exchange Act Rule 12b-20 does not require a showing of scienter, because Marcum placed China Ruitai on notice that it should file a Form 8-K announcing the resignation of its auditor, China Ruitai deliberately or recklessly disregarded its regulatory requirement to file such form. Marcum provided China Ruitai with ample opportunity to take remedial action and report to the Commission that an illegal act had potentially occurred, but China Ruitai did nothing.

The second prong for assessing a third-tier penalty involves a more complex analysis. In its Supplemental Motion, the Division argues that a defendant's conduct can create both a substantial loss to other persons and the risk of substantial loss to other persons where victims of fraud purchased the company's stock, and were then stuck with it until the company's financial demise. Supplemental Motion at 3 (citing SEC v. Huff, 758 F. Supp. 2d 1288, 1364 (S.D. Fla. 2010), aff'd, 455 F. App'x 882 (11th Cir. 2012)). The Division notes that during the relevant six-month period during which its misinformation was "in" the market, China Ruitai's stock price remained "comparably stable at prices between $.15 and $.30," with over 395,000 shares trading hands in twenty-one transactions. Id. at 5. After December 2011, however, trading in China Ruitai's stock effectively ceased, with only thirteen transactions in 2012 and a significant drop in price down to $.03 by the end of 2012. Id.

I find that with respect to the four 2011 Quarterly Reports and Amendment violations the second prong is met and that third-tier civil penalties should be imposed.

> [I]n an open and developed securities market, the price of a company's stock is determined by the available material information regarding the company and its business. . . . Misleading statements will therefore defraud purchasers of stock even if the purchasers do not directly rely on the misstatements. . . . The causal connection between the defendants' fraud and the [purchasers'] purchase of stock in such a case is no less significant than in a case of direct reliance on misrepresentations.

Basic Inc., 485 U.S. at 241-42 (quoting Paul v. Speiser, 806 F.2d 1154, 1160-61 (3d Cir. 1986)) (omissions in original). I find that the appropriate time period where misinformation spoiled the market ran from May 16, 2011 – when China Ruitai filed its first quarter results for 2011 – through March 30, 2012 – when China Ruitai filed a Form NT 10-K, announcing that its annual report would be delayed. Although the misinformation was not revealed on March 30, 2012, after this date China Ruitai did not make any additional filings, including its Form 8-K to announce the resignation of its auditor. See Div. Ex. M. During this period, China Ruitai's stock prices were at an artificially high level. Investors who purchased stock during that period

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and-desist order have been violated. Motion at 14. Section 20(d) of the Securities Act and Sections 21(d)(3)(A) and (B) of the Exchange Act apply to actions brought in United States district courts, not administrative proceedings. See 15 U.S.C. §§ 77t(d), 78u(d)(3)(A), 78u(d)(3)(B). I will therefore evaluate the Division's requests pursuant to Exchange Act Section 21B(a)(2).

suffered substantial losses or risked substantial losses once China Ruitai was unable to continue disseminating materially false and misleading information. See Vladlen "Larry" Vindman, Securities Act Release No. 8679 (Apr. 14, 2006), 87 SEC Docket 2626, 2634 n.22, 2641 (significant risk of substantial losses to those who traded in stock that ranged from $.025 to $.36 per share). Stock prices ranged from a low of $.10 to a high of $.51 during this period. Supplemental Ex. A. Trading was relatively robust from May 16, 2011, through the end of November 2011 (the period when China Ruitai was actively disseminating materially false and misleading information), with around 400,000 shares trading hands. Id. From December 2011 through March 30, 2012, when China Ruitai was no longer actively disseminating materially false and misleading information but the information remained in the market, trading dropped precipitously, with only 21,500 shares trading hands. Id. After March 30, 2012, trading continued to be sparse, with only 73,500 shares trading hands over twelve separate days through the end of 2012. Id. During that period, the price dropped from $.13 to $.03. Id.

I find that with respect to the fifth violation, the failure to file a Form 8-K, a second tier penalty should be imposed. There is no evidence that China Ruitai's failure to file a Form 8-K announcing the resignation of its auditor caused a substantial loss or risk of substantial loss to investors. China Ruitai was required to file a Form 8-K after Marcum resigned on July 27, 2012. At this point in time, China Ruitai's stock price had already fallen to $.05 with no trades occurring since May 22, 2012. Id.

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) (internal quotation marks omitted); see Ronald S. Bloomfield, Exchange Act Release No. 71632, 2014 WL 768828, at *23 (Feb. 27, 2014). Within any particular tier, the Commission has the discretion to set the amount of the penalty. See Brendan E. Murray, Advisers Act Release No. 2809 (Nov. 21, 2008), 94 SEC Docket 11961, 11978. For the relevant period, for a corporation the maximum second-tier penalty was $375,000, and the maximum third-tier penalty was $750,000. 17 C.F.R. § 201.1104 and Table IV to Subpart E.

Several considerations bear on the amount of a penalty. In considering whether a penalty is in the public interest, the Commission considers six factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. 15 U.S.C. § 78u-2(c). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." Robert G. Weeks, Initial Decision Release No. 199 (Feb. 4, 2002), 76 SEC Docket 2609, 2671. In addition to these statutory factors, courts consider:

> (1) the egregiousness of the violations at issue, (2) defendants' scienter, (3) the repeated nature of the violations, (4) defendants' failure to admit to their wrongdoing; (5) whether defendants' conduct created substantial losses or the risk of substantial losses to other persons; (6) defendants' lack of cooperation and honesty with authorities, if any; and (7) whether the penalty that would otherwise be appropriate should be reduced due to defendants' demonstrated current and future financial condition.

SEC v. Lybrand, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003), aff'd, 425 F.3d 143 (2d Cir. 2005).

Regarding the six statutory factors, factors one, two, and five weigh in favor of a large penalty: China Ruitai's violations mostly involved fraud and harm to investors, and substantial penalties will deter others. However, the failure to file a Form 8-K did not harm investors. There is no evidence pertaining to the other three statutory factors. Regarding the seven Lybrand factors, factors one through five weigh in favor of a heavy sanction. No evidence regarding factors six and seven has been presented.

I find one second-tier penalty of $100,000 and four third-tier penalties of $500,000 each, or $2,100,000 total, to be warranted.

Order

IT IS ORDERED that, pursuant to Section 21C of the Securities Exchange Act of 1934, China Ruitai International Holdings Co., Ltd., shall CEASE AND DESIST from committing any violations or future violations of Sections 10(b), 10A(b)(3), 13(a), and 13(b)(2)(A) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

IT IS FURTHER ORDERED that, pursuant to Section 21B of the Securities Exchange Act of 1934, China Ruitai International Holdings Co., Ltd., shall PAY A CIVIL MONEY PENALTY in the amount of $2,100,000.

Payment of penalties shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made 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. The payment, and a cover letter identifying the Respondent and Administrative Proceeding No. 3-15544, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., 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 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to 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 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that 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 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 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.

Respondents are notified that they may move to set aside the default in this case. Rule 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.

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Cameron Elliot
Administrative Law Judge