

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89023 / June 5, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4147 / June 5, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19824

In the Matter of

**JANA FAITH
KIENA, CPA,**

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS PURSUANT TO
SECTIONS 4C AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND RULE 102(e)
OF THE COMMISSION’S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Jana Faith Kiena, CPA (“Respondent” or “Kiena”) pursuant to Sections 4C¹ and 21C of the Securities

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

Exchange Act of 1934 (“Exchange Act”) and 102(e)(1)(iii) of the Commission’s Rules of Practice.²

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over her and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

A. SUMMARY

These proceedings involve insider trading by Jana Faith Kiena, a certified public accountant (“CPA”), who is licensed in California, and worked as an accountant in the revenue recognition department at Illumina, Inc. (“Illumina” or “ILMN”). In late June 2019, during a meeting at Illumina, an accounting manager told Kiena and others that Illumina would have disappointing revenues for its second quarter of 2019. While possessing, and on the basis of, this material nonpublic information, Kiena bought a total of 50 short term out of the money ILMN put option contracts on two days, July 2 and 8, 2019. On July 11, 2019, after the market closed, Illumina disclosed that its second quarter revenues would be lower than expected and updated its full year revenue guidance. ILMN’s stock price dropped from \$363.66 to \$305.05 per share, or approximately 16%, following the issuance of the announcement. On July 12, 2019, Kiena sold the 50 option contracts and netted \$249,227.92 in profits.

In August 2019, Kiena self-reported her trading to the Commission staff.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

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

B. RESPONDENT

Jana Faith Kiena, 59, resides in San Diego, California. Kiena worked at Illumina as a contract employee from May to October 2019 in its revenue recognition department. She is currently the chief financial officer of a biotechnology company. Since November 15, 1996, Kiena has been a CPA licensed in California; her CPA license, however, is currently inactive.

C. RELATED ENTITY

Illumina, Inc., is a Delaware corporation headquartered in San Diego, California. Illumina manufactures DNA sequencing machines, and its services are used by genetic testing companies. Illumina is an SEC-reporting company with a class of shares registered under Section 12(b) of the Exchange Act. Its common stock is quoted on the NASDAQ Global Select Market under the ticker symbol “ILMN,” and its options are quoted on the CBOE. Illumina’s second quarter ended on June 30, 2019.

D. FACTS

1. In May 2019, Kiena began as a contract employee at Illumina in its revenue recognition department. Upon starting at Illumina, she was informed that she could not buy or sell ILMN securities while in possession of material, nonpublic information.

2. While in Illumina’s revenue recognition department, Kiena processed revenue related to monthly service contracts. She also participated in periodic status updates about revenue by phone or in-person. The in-person updates were called “group huddles.” At one group huddle, in late June 2019, an accounting manager told the group of approximately seven employees, including Kiena, that revenue for the second quarter would be disappointing.

3. Kiena knew or was reckless in not knowing that information about Illumina’s revenue was material and nonpublic. Kiena also knew or was reckless in not knowing that she owed a duty of trust and confidence to Illumina to refrain from trading in Illumina securities while in possession of the confidential information about revenues that she learned in the course of her employment.

4. Shortly after the aforementioned group huddle, on July 2, 2019, Kiena took a cash advance on her credit card and bought \$13,638.33 worth of July 12, 2019 out of the money ILMN put option contracts with a strike price of \$365 per share. Six days later, on July 8, 2019, she took money out of her savings account and bought an additional \$3,096.33 worth of the same short-term out of the money ILMN put option contracts. Kiena bought these 50 put option contracts while possessing, and on the basis of, material nonpublic information about Illumina’s disappointing revenues.

5. On July 11, 2019, Illumina announced that the company’s preliminary revenue for the second quarter would be lower than expected and updated its full year revenue guidance. Illumina’s stock price dropped from \$363.66 to \$305.05 per share or approximately a 16%

decrease following the issuance of the announcement. The next day, on July 12, 2019, Kiena sold her 50 put option contracts, realizing a gain of \$249,227.92.

6. Within a month after her insider trading, Kiena self-reported her Illumina trading to the Commission staff.

E. VIOLATIONS

7. As a result of the conduct described above, Kiena violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

F. RESPONDENT'S COOPERATION

8. In determining to accept this Offer, the Commission considered Respondent's cooperation afforded the Commission's staff.

G. FINDINGS

9. Based on the foregoing, the Commission finds that Kiena willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Kiena's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Kiena shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

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

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

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Kiena's work in her practice before the Commission as an accountant will be reviewed either by the

independent audit committee of the public company for which she works or in some other acceptable manner, as long as she practices before the Commission in this capacity; and/or

2. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Kiena, or the public accounting firm with which she is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
- (b) Kiena, or the registered public accounting firm with which she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that Kiena will not receive appropriate supervision;
- (c) Kiena has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
- (d) Kiena acknowledges her responsibility, as long as she appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

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

an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

E. Respondent shall, within 14 days, pay disgorgement of \$249,227.92 and a civil penalty of \$124,613.96 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement is not made, interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of the civil money penalty is not made, interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Jana Faith Kiena as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Alka Patel, Associate Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower St, Suite 900, Los Angeles, CA 90071.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, she shall not argue that she is entitled to, nor shall she benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that she shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a

private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

G. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$124,613.96, based on her cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether she knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary