

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 11104 / September 21, 2022**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 95847 / September 21, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21118**

**In the Matter of**

**Sheng Fu and**  
**Ming Xu,**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against Sheng Fu and pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Sheng Fu and Ming Xu (collectively, the “Respondents”).

## II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

## III.

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>1</sup> that:

### Summary

1. This matter concerns Sheng Fu’s role in the misleading statements and disclosure failures of his employer Cheetah Mobile, Inc., a China-based mobile internet company (“Cheetah Mobile” or the “Company”), related to a material negative revenue trend that the Company experienced in late 2015 and early 2016, and insider trading by Sheng Fu, Cheetah Mobile’s Chief Executive Officer (“CEO”), and the Company’s former President and Chief Technology Officer (“CTO”) Ming Xu.

2. In 2015 and 2016, Cheetah Mobile was focused on developing mobile and computer applications, mobile games, and other content-driven products, and it earned up to one-third of its revenues by placing within its applications third-party advertisements provided by its largest advertising partner, an advertising division of a major social media platform (the “Advertising Partner”).

3. In the summer of 2015, the Advertising Partner informed Cheetah Mobile that it was going to change its algorithm that determined fees for ad placements, and that, unless Cheetah Mobile improved the quality of its ad placements, the algorithm change could halve the revenues that the Advertising Partner paid to Cheetah Mobile.

4. The Advertising Partner initially offered some accommodations to Cheetah Mobile, including postponing the full roll-out of the algorithm change and temporarily increasing Cheetah Mobile’s share of fees from ad placements, and it also worked with Cheetah Mobile on

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<sup>1</sup> The findings herein are made pursuant to Respondents Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

efforts to improve its ad placements. By the end of 2015, however, it became clear that the Company would not be able to implement a solution that would prevent a drop-off in revenues from the Advertising Partner algorithm change, and Cheetah Mobile's revenues from the Advertising Partner began to decline.

5. Cheetah Mobile earned approximately \$52.1 million in Advertising Partner revenues in the third quarter of 2015, which ended on September 30, 2015, but it earned only approximately \$46.4 million in Advertising Partner revenues in the fourth quarter of 2015, which ended on December 31, 2015 – an approximately 11% decline that also represented approximately 3% of Cheetah Mobile's total fourth-quarter revenue of approximately \$174.9 million.

6. Cheetah Mobile's revenue from the Advertising Partner declined even further in the first quarter of 2016, which ended on March 31, 2016, to approximately \$32.7 million – an approximately 30% decline, representing approximately 8% of Cheetah Mobile's total first-quarter revenue of approximately \$172.9 million.

7. Despite this known negative trend, during its quarterly conference call with analysts and investors in March 2016, Sheng Fu ascribed the “softness” in Cheetah Mobile's first-quarter 2016 revenue guidance primarily to greater-than-expected “seasonality.” This explanation was materially misleading because Sheng Fu failed to disclose the Advertising Partner's algorithm change and the negative impact of this change on the revenue that Cheetah Mobile received from the Advertising Partner.

8. Cheetah Mobile also failed to disclose this known negative trend in revenue from the Advertising Partner resulting from its algorithm change in its annual report for the year ending December 31, 2015, filed on SEC Form 20-F in April 2016 (the “Form 20-F”) and signed by Sheng Fu, despite an affirmative obligation to disclose on this form any known trends, uncertainties, or events that are reasonably likely to have a material effect on its revenues, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition.

9. In addition, in late March 2016, while aware of material nonpublic information about the negative revenue trend, Cheetah Mobile's CEO Sheng Fu and its President and CTO Ming Xu established, through an entity they jointly held, a trading plan for selling some of their holdings of Cheetah Mobile securities (the “March Trading Plan”).

10. On May 19, 2016, Cheetah Mobile disclosed its lower-than-expected second-quarter 2016 revenue guidance and announced that it did not expect to meet its previously-issued revenue and earnings guidance for the full year 2016. Following this disclosure, its stock price declined by approximately 18%.

11. By selling 96,000 Cheetah Mobile American Depositary Shares (“ADS”) under the March Trading Plan before Cheetah Mobile's disclosure of negative revenue trend to

investors, Sheng Fu and Ming Xu avoided losses of approximately \$203,290 and \$100,127, respectively.

### **Respondents**

12. Sheng Fu, a resident of China, is, and was during the relevant period, CEO of Cheetah Mobile.

13. Ming Xu, a resident of China, was President and CTO of Cheetah Mobile during the relevant period. In those roles during the relevant period, Ming Xu was not in charge of the Company's periodic disclosures to investors or financial analysts, or its filings with the Commission. Ming Xu resigned from Cheetah Mobile in June 2018.

### **Relevant Entity**

14. Cheetah Mobile, incorporated in the Cayman Islands with a principal place of business in Beijing, China, is a mobile internet company. Cheetah Mobile is a foreign private issuer required to file annual reports with the Commission on Form 20-F. Cheetah Mobile's ADS each represent 10 Class A ordinary shares registered under Section 12(b) of the Exchange Act and are listed on the New York Stock Exchange under the symbol "CMCM."

### **Facts**

#### **Negative Trend in Revenues from the Advertising Partner**

15. In 2015, one of Cheetah Mobile's largest sources of revenue – nearly one-third of its total revenue in the third quarter of 2015 – was payment for advertisements placed in its applications by the Advertising Partner.

16. In the summer of 2015, the Advertising Partner and Cheetah Mobile had a series of face-to-face meetings and other communications. In at least one of the meetings, in mid-August 2015, the Advertising Partner informed Cheetah Mobile and its executives, including Sheng Fu and Ming Xu, that it was changing the algorithm it used to determine payment for advertising placements within Cheetah Mobile's applications, and that, absent improvements to Cheetah Mobile ad placement quality, the algorithm change could negatively impact Cheetah Mobile's revenues from the Advertising Partner. The Advertising Partner presented Cheetah Mobile with a hypothetical analysis indicating that, had the algorithm change been implemented during the immediately preceding two months, Cheetah Mobile's revenues from the relationship during those two months would have been approximately \$13.3 million, rather than the \$26.1 million that Cheetah Mobile actually earned during that time.

17. To address the potential negative revenue impact, the Advertising Partner offered to work with Cheetah Mobile on ad placement improvements, and Cheetah Mobile made efforts to improve its ad placements, as suggested by the Advertising Partner. As the Advertising

Partner began implementing the algorithm change during the third quarter of 2015, in response to Cheetah Mobile's concerns about the effect that the algorithm change would have on the Company's revenues, the Advertising Partner also voluntarily delayed the algorithm's full roll-out until August 31, 2015 and provided Cheetah Mobile with a "revenue-share accommodation" for the month of September 2015: a temporary increase in Cheetah Mobile's share of total revenues earned on advertisements placed by the Advertising Partner. As a result, Cheetah Mobile met its total revenue guidance for that quarter, achieving total quarterly revenues of approximately \$158.7 million, and achieving sequential revenue growth compared to the second quarter of 2015. But the Advertising Partner declined to extend the arrangement beyond that quarter, and the revenue-share accommodation thus ended on September 30, 2015.

18. By the end of 2015, it became clear that the Company would not be able to implement a solution to prevent a drop-off in revenues from the algorithm change, and Cheetah Mobile's revenues from the Advertising Partner began to decline. For example, those revenues decreased from approximately \$15.1 million in December 2015 to approximately \$10.8 million in January 2016, a sequential decline of approximately 28%.

19. Cheetah Mobile's monthly revenues from the Advertising Partner persisted at this lower level for the rest of the first quarter of 2016. The Company received approximately \$10.5 million in revenues from the Advertising Partner in February 2016 and approximately \$11.4 million in March 2016.

20. Overall, in the fourth quarter of 2015, Cheetah Mobile's revenue from the Advertising Partner declined by approximately 11%, from approximately \$52.1 million in the third quarter of 2015 to approximately \$46.4 million in the fourth quarter of 2015. Although the Company achieved year-over-year growth in total annual and quarterly revenues and met its annual and quarterly revenue guidance, the fourth quarter decline in revenue from the Advertising Partner was significant. The decline represented approximately 3% of Cheetah Mobile's fourth-quarter revenue of approximately \$174.9 million. In the first quarter of 2016, Cheetah Mobile's revenue from the Advertising Partner relationship further declined by approximately 30%, to approximately \$32.7 million. This decline represented approximately 8% of Cheetah Mobile's total first-quarter revenue of approximately \$172.9 million. Cheetah Mobile lowered its quarterly revenue guidance on March 16, 2016.

21. Sheng Fu and Ming Xu knew about the negative revenue trend. As CEO and CTO, respectively, Sheng Fu and Ming Xu received regular updates on Advertising Partner-derived revenue.

22. During their discussions with the Advertising Partner, they also expressed concern about the revenue decline. For example, in at least one face-to-face meeting with the Advertising Partner, Sheng Fu expressed concern that the algorithm change would result in revenue decline for Cheetah Mobile and cause the Company to fail to meet its own revenue targets and Wall Street expectations. In at least two emails sent to the Advertising Partner in November and December 2015, Ming Xu similarly expressed concerns about the revenues from

the Advertising Partner's ad placements being lower than expected and about potential Wall Street reaction in the event of a significant revenue decline.

### **Cheetah Mobile Failed to Disclose the Negative Trend in Revenue from the Advertising Partner**

23. On March 16, 2016, Cheetah Mobile hosted a conference call to discuss the Company's financial results for the fourth quarter and full year of 2015, which the Company had announced earlier that day. Ming Xu did not participate in this call. During the call, Cheetah Mobile provided earnings guidance for the first quarter of 2016 that reflected an expected decline in overall revenues compared to the immediately preceding quarter. In explaining this expected sequential decline, Sheng Fu referenced declines in certain partner revenues, but emphasized primarily "seasonality."

24. In particular, Sheng Fu stated during the call, "I think the softness that you may see in the first quarter guidance which indicated sequential decline for the first time is mainly due to not only seasonality but also some declines in one of our largest third party advertising platform partners, where we see significant sequential moderations in sales there. We don't see any structural changes in overall markets or any competitive landscape." Sheng Fu further noted that "if you look at some of the softness in first quarter in our guidance, I think as we mentioned before ... some of the greater than expected seasonality or softness coming from one of our largest ... platform partners."

25. Sheng Fu's statements about revenue trends and expectations were materially misleading because Sheng Fu did not disclose that the algorithm change had created a negative trend in revenues from the Advertising Partner, and that this trend was persistent, and not seasonal in nature.

26. On April 22, 2016, Cheetah Mobile filed a Form 20-F for fiscal year 2015 with the Commission. Sheng Fu signed the Form 20-F.

27. Form 20-F requires an issuer to disclose "known trends, uncertainties, ... or events ... that are reasonably likely to have a material effect on the company's ... revenues, ... or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition." Despite this requirement, Cheetah Mobile did not disclose the known negative revenue trend related to the Advertising Partner's algorithm change and instead stated that it was:

not aware of any trends, uncertainties, demands, commitments or events for the year ended December 31, 2015 that are reasonably likely to have a material and adverse effect on our net revenues, income, profitability, liquidity or capital resources, or that would cause the disclosed financial information to be not necessarily indicative of future results of operations or financial conditions.

28. Before the market opened on May 19, 2016, Cheetah disclosed the Company's first-quarter 2016 financial results, which were furnished to the Commission on Form 6-K (the "May Announcement"). In the May Announcement, Cheetah Mobile disclosed lower-than-expected second-quarter guidance, due to a "weakness in our expected mobile revenues growth, which is a key driver of our overall growth," caused, among other things, by a decline in [a measure of advertising revenues] from some of our third-party advertising platform partners." In a conference call with analysts that same day, Cheetah Mobile announced that the Company did not expect it would meet its previously-issued revenue and earnings guidance for the full year 2016. Ming Xu did not participate in the conference call. Following these disclosures, the price of Cheetah Mobile's ADS declined by approximately 18%, dropping to a closing price of \$11.43 per share on May 19, 2016, from the prior trading day's closing price of \$14 per share.

### **Sheng Fu and Ming Xu Sold Cheetah Mobile Securities Before the May Announcement**

29. On March 29, 2016, Sheng Fu and Ming Xu established the March Trading Plan in the name of FaX Vision Corporation ("FaX Vision"), a private British Virgin Islands company in which Sheng Fu owned a two-thirds interest, and Ming Xu owned a one-third interest. The plan provided advance directives for sale of Cheetah Mobile securities by FaX Vision's brokerage firm.

30. The March Trading Plan purported to be a so-called "10b5-1" plan, after Exchange Act Rule establishing that, in certain circumstances, a written plan with advance directives for trading securities can provide an affirmative defense to insider trading allegations, but only if the plan is established in good faith at a time when the person establishing it is unaware of material nonpublic information.

31. Cheetah Mobile's insider trading policy, to which Sheng Fu and Ming Xu were subject, prohibited employees from trading in Company securities and from establishing 10b5-1 trading plans while in possession of material nonpublic information. Furthermore, as officers of Cheetah Mobile, Sheng Fu and Ming Xu owed Cheetah Mobile and its shareholders a duty to refrain from using the Company's confidential information for their own personal gain.

32. Between the establishment of the March Trading Plan on March 29, 2016, and the May Announcement, Sheng Fu's and Ming Xu's FaX Vision vehicle sold 96,000 Cheetah Mobile ADS pursuant to the March Trading Plan. By selling before the May Announcement, Sheng Fu and Ming Xu together avoided losses of \$303,417, with Sheng Fu avoiding losses \$203,290 and Ming Xu avoiding losses of \$100,127.

33. At both the time they established the March Trading Plan and when they sold Cheetah Mobile securities pursuant to it, Sheng Fu and Ming Xu knew about the material negative trend in revenues from the Advertising Partner relationship. Sheng Fu and Ming Xu knew or recklessly disregarded that this information was material and nonpublic. Moreover,

because both Sheng Fu and Ming Xu were aware of this material nonpublic information when they created the March Trading Plan, the March Trading Plan did not comport with the requirements of Exchange Act Rule 10b5-1.

34. Sheng Fu and Ming Xu knew or recklessly disregarded that, by selling Cheetah Mobile securities in advance of the disclosure of this material nonpublic information to investors, they each breached the duty of trust and confidence they owed to Cheetah Mobile and its shareholders.

### Violations

#### **Sheng Fu**

35. As a result of the conduct described above, Sheng Fu 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.

36. In addition, Sheng Fu violated Sections 17(a)(2) and (3) of the Securities Act, which prohibit any person from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in the offer or sales of securities. A violation of these provisions does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-02 (1980).

37. In addition, Sheng Fu was a cause of Cheetah Mobile's violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, which require reporting companies to file with the Commission accurate annual reports, and of Exchange Act Rule 12b-20, which requires an issuer to include in a statement or report filed with the Commission any information necessary to make the required statements in the filing not materially misleading.

#### **Ming Xu**

38. As a result of the conduct described above, Ming Xu 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.



## Undertakings

### **Sheng Fu**

Sheng Fu has undertaken as follows:

39. For a period of five years from the date of this Order, if Sheng Fu engages, directly or indirectly, in a transaction in Cheetah Mobile securities or any derivative of Cheetah Mobile securities as defined in Exchange Act Rule 16a-1(c), or enters into any agreement relating to Cheetah Mobile securities, including but not limited to futures contracts or contracts for difference (“Cheetah Mobile Securities” and any such transaction, a “Cheetah Mobile Securities Transaction”), Sheng Fu shall, within forty-eight hours of the execution of such Cheetah Mobile Securities Transaction, disclose by e-mail to Joseph G. Sansone, or such other person as the Commission staff may request, the details of such Cheetah Mobile Securities Transaction. Such disclosure (“Securities Transaction Disclosure”) shall include the transaction date, type, price, number of shares, exercise or conversion price (if applicable), and the name of the broker-dealer and account through which the Cheetah Mobile Securities Transaction was executed.

40. For a period of five years from the date of this Order, if Sheng Fu enters into a trading plan that purports to be established pursuant to Exchange Act Rule 10b5-1 (a “10b5-1 Plan”), or modifies or cancels an existing 10b5-1 Plan, with respect to Cheetah Mobile Securities, Sheng Fu shall, within forty-eight hours of such establishment, modification, or cancellation, disclose by e-mail to Joseph G. Sansone, or such other person as the Commission staff may request, the material terms of any such establishment, modification, or cancellation, including the date of the establishment, modification, or cancellation and, in the case of any new or modified plan, the duration of the plan, the aggregate number of shares to be purchased and/or sold pursuant to the plan, any limit prices, and timing of purchases and/or sales pursuant to the plan.

41. For a period of five years from the date of this Order, if Sheng Fu establishes a new 10b5-1 Plan or modifies the terms of an existing 10b5-1 Plan with respect to Cheetah Mobile Securities, Sheng Fu shall cause the terms of such 10b5-1 Plan to provide that no transactions pursuant to the 10b5-1 Plan or its modification shall occur until expiration of a cooling-off period of at least 120 days from the adoption or modification of such 10b5-1 Plan.

42. For a period of five years from the date of this Order, Sheng Fu shall maintain, directly or indirectly, no more than one 10b5-1 Plan at any given time with respect to Cheetah Mobile Securities.

43. For a period of five years from the date of this Order, Sheng Fu shall provide notice to Cheetah Mobile’s legal department at least forty-eight hours prior to entering into any Cheetah Mobile Securities Transaction other than pursuant to a 10b5-1 Plan; and Sheng Fu shall

not enter into such Cheetah Mobile Securities Transaction unless and until he receives approval from Cheetah Mobile's legal department.

44. If, during the five-year period from the date of this Order, Sheng Fu ceases to be affiliated with Cheetah Mobile or any of its affiliates in any capacity, including as an officer, director, employee, or consultant, whether or not for compensation, (a "Separation"), Sheng Fu's obligations pursuant to paragraphs 39 through 43 shall continue for a period of six months after any such Separation, after which Sheng Fu shall not have any obligations pursuant to paragraphs 39 through 43 above for so long as his Separation continues. If at any point during the five-year period from the date of this Order, Sheng Fu should re-affiliate with Cheetah Mobile or any of its affiliates in any capacity, including as an officer, director, employee, or consultant, whether or not for compensation, the obligations pursuant to paragraphs 39 through 43 shall again apply to Sheng Fu with full force and effect.

45. Within 30 days of the date of this Order, Sheng Fu shall provide a notice by e-mail to Joseph G. Sansone, or such other person as the Commission staff may request, identifying all brokerage accounts that he owns or controls, directly or indirectly, that have the ability to trade securities that trade on United States securities exchanges (each, a "US Securities Account"). Such notice shall identify the account name and account number of any such US Securities Account and the broker-dealer at which such US Securities Account is maintained.

46. For a period of five years from the date of this Order, if Sheng Fu, directly or indirectly, opens a new US Securities Account, he shall, within 48 hours of the opening of such US Securities Account, provide a notice by e-mail to Joseph G. Sansone, or such other person as the Commission staff may request, identifying the account name and account number of any such new US Securities Account and the broker-dealer at which such US Securities Account is maintained.

47. For a period of five years from the date of this Order, Sheng Fu shall not, directly or indirectly, engage in any Cheetah Mobile Securities Transaction, other than in a US Securities Account that has been previously disclosed to the Commission staff pursuant to paragraph 45 or 46 above.

48. On an annual basis for a period of five years from the date of this Order, Sheng Fu shall certify, in writing, compliance with the undertakings set forth in paragraphs 39 through 47 above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. Such certification shall be submitted to Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division.

## **Ming Xu**

Ming Xu has undertaken as follows:

49. Within 30 days of the date of this Order, Ming Xu shall provide a notice by e-mail to Joseph G. Sansone, or such other person as the Commission staff may request, of all of his US Securities Accounts. Such notice shall identify the account name and account number of any such US Securities Account and the broker-dealer at which such US Securities Account is maintained.

50. For a period of five years from the date of this Order, if Ming Xu, directly or indirectly, opens a new US Securities Account, he shall, within 48 hours of the opening of such US Securities Account, provide a notice by e-mail to Joseph G. Sansone, or such other person as the Commission staff may request, identifying the account name and account number of any such new US Securities Account and the broker-dealer at which such US Securities Account is maintained.

51. For a period of five years from the date of this Order, Ming Xu shall not, directly or indirectly, engage in any Cheetah Mobile Securities Transaction, other than in a US Securities Account that has been previously disclosed to the Commission staff pursuant to paragraph 49 or 50 above.

52. For a period of five years from the date of this Order, if Ming Xu engages, directly or indirectly, in a Cheetah Mobile Securities Transaction, Ming Xu shall, within forty-eight hours of the execution of such Cheetah Mobile Securities Transaction, provide a Securities Transaction Disclosure by e-mail to Joseph G. Sansone, or such other person as the Commission staff may request.

53. On an annual basis for a period of five years from the date of this Order, Ming Xu shall certify, in writing, compliance with the undertakings set forth in paragraphs 49 through 52 above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. Such certification shall be submitted to Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

#### **Sheng Fu**

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Sheng Fu shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 10(b) and 13(a) of the Exchange Act and Rules 10b-5, 12b-20, and 13a-1 thereunder.

B. Sheng Fu shall comply with the undertakings enumerated in paragraphs 39 through 48 above.

C. Sheng Fu shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$556,580 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

#### **Ming Xu**

A. Pursuant to Section 21C of the Exchange Act, Respondent Ming Xu shall cease and desist from committing or causing any violations and any future violations Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Ming Xu shall comply with the undertakings enumerated in paragraphs 49 through 53 above.

C. Ming Xu shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$200,254 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment of penalties pursuant to this Order must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Sheng Fu or Ming Xu 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 Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, New York, New York 10004, or such other person as the Commission staff may request.

Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 a 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.

**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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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