

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 98550 / September 27, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21735**

**In the Matter of**  
  
**Peixin Xu,**  
  
**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO 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 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Peixin Xu (“Xu” or “Respondent”).

**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 Respondent 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 Cease-and-Desist Proceedings Pursuant to 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 Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person who directly or indirectly acquires beneficial ownership of more than 5% of a registered class of equity security to file a statement with the Commission disclosing certain information and to file certain updating amendments. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.
3. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.
4. While subject to these reporting requirements of Section 16(a) as a director and greater than 10% beneficial owner of Cineverse Corp. ("Cineverse"), Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Cineverse's securities. Respondent also violated Section 13(d) on multiple occasions by failing to timely file required amendments to the Schedule 13D Respondent initially filed with respect to his beneficial ownership in Cineverse.

#### Respondent

5. Xu, age 51, is the managing partner and founder of Bison Capital Holding Company Limited and Bison Finance Group Ltd. (collectively, and together with their direct and indirect subsidiaries, "Bison"). Xu acquired beneficial ownership of more than 50% of Cineverse's

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

registered class of common stock as of November 1, 2017, when a transaction with the issuer closed in which Bison purchased Cineverse stock in a private placement and obtained the right to appoint two directors to Cineverse's board. Xu became a director at Cineverse upon the closing of the transaction as one of Bison's designees. Xu continues to be a greater than 10% beneficial owner and serve as a director of the company.

### **Issuer**

6. Cineverse, f/k/a Cinedigm Corp. prior to May 2023, is a Delaware corporation with its principal place of business in New York. Cineverse's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: CNVS).

### **Applicable Legal Framework**

7. Under Section 13(d)(1) of the Exchange Act, any person, including a group, who has acquired beneficial ownership of more than 5% of any class of equity security registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

8. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made, including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned. An acquisition or disposition of beneficial ownership of securities in an amount equal to 1% or more of the class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.<sup>2</sup>

9. Under Section 13(d) of the Exchange Act and the application of Rule 13d-3, a beneficial owner of a security includes "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to such security. More than one person may be a beneficial owner of the same securities. Because persons who have indirect, as well as shared, voting and investment power are beneficial owners under the standards set forth in Rule 13d-3, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.<sup>3</sup>

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<sup>2</sup> Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), 63 Fed. Reg. 2854, 2855 n.14 (Jan. 16, 1998).

<sup>3</sup> See SEC Release No. 34-39538, 63 Fed. Reg. at 2857. If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised

10. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.

11. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 report within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

12. Although the Commission has encouraged the practice of many issuers to “help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and timely filing,” Section 16 places the responsibility to report changes in securities ownership on insiders.<sup>4</sup>

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independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

<sup>4</sup> Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25789 (May 13, 2003).

13. There is no state of mind requirement for violations of Section 16(a) and 13(d) and the rules thereunder.<sup>5</sup> The failure to timely file a required report, even if inadvertent, constitutes a violation.<sup>6</sup>

**Respondent Failed to File Required Section 16(a) Reports on a Timely Basis**

14. Since November 1, 2017, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) as a director and greater than 10% beneficial owner of Cineverse, and remains subject to those requirements. Respondent timely filed an initial statement of beneficial ownership on Form 3 on November 9, 2017.

15. Subsequently, Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	7/9/19	7/11/19	11/21/19
4	7/12/19	7/16/19	11/21/19
4	8/2/19	8/6/19	11/21/19
4	1/13/20	1/15/20	5/31/23
4	4/15/20	4/17/20	5/20/20
4	12/24/20	12/29/20	1/31/21
4	12/28/20	12/30/20	1/31/21
4	12/30/20	1/4/21	1/31/21
4	12/31/20	1/5/21	1/31/21

<sup>5</sup> See, e.g., SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct”); SEC v. e-Smart Technologies, Inc., 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act).

<sup>6</sup> Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at \*1–2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); see generally Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at \*7 (Mar. 21, 2002) (Commission opinion) (“evidence of both motive for non-disclosure and actual market impact . . . is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); SEC Release No. 34-47809, 68 Fed. Reg. at 25792 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	2/19/21	2/23/21	5/31/23
4	2/25/21	3/1/21	8/26/21
4	3/2/21	3/4/21	8/26/21
4	3/3/21	3/5/21	8/26/21
4	3/8/21	3/10/21	8/26/21
4	3/9/21	3/11/21	8/26/21
4	3/10/21	3/12/21	8/26/21
4	3/11/21	3/15/21	8/26/21
4	3/12/21	3/16/21	8/26/21
4	3/15/21	3/17/21	8/26/21
4	3/16/21	3/18/21	8/26/21
4	3/17/21	3/19/21	8/26/21
4	3/18/21	3/22/21	8/26/21
4	3/19/21	3/23/21	8/26/21
4	3/22/21	3/24/21	8/26/21
4	3/23/21	3/25/21	8/26/21
4	11/3/21	11/5/21	5/31/23
4	9/27/22	9/29/22	5/31/23
4	9/28/22	9/30/22	5/31/23
4	9/30/22	10/4/22	5/31/23
4	11/17/22	11/21/22	5/31/23
4	11/18/22	11/22/22	5/31/23
4	11/21/22	11/23/22	5/31/23
4	11/30/22	12/2/22	5/31/23
4	12/14/22	12/16/22	5/31/23
4	12/20/22	12/22/22	5/31/23
4	12/21/22	12/23/22	5/31/23

16. All of Respondent's transactions since July 2019 were reported late, typically by a month or more. These transactions included over \$20 million in open-market and privately-

negotiated sales between September 2020 and December 2022 and also included approximately \$22 million in acquisitions from the issuer through various stock purchase agreements or loan conversions. Respondent also failed to file required Forms 5 to report transactions that should have been reported on Forms 4 during Cineverse's fiscal years 2020, 2021, and 2022 but were not.

17. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

### **Respondent Failed to Timely File Schedule 13D Amendments**

18. Respondent has been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of Cineverse's common stock as of November 1, 2017, and remains subject to those requirements. Respondent filed a timely initial Schedule 13D statement on November 9, 2017.

19. Subsequently, Respondent failed to timely file multiple amendments required as a result of material changes to the information set forth previously on Schedule 13D, including:

- Respondent's acquisitions through agreements with Cineverse, each of which constituted an acquisition of beneficial ownership of more than 1% of the outstanding class of Cineverse common stock on the following dates: (i) July 9, 2019, which was not reflected in an amendment until November 22, 2019; (ii) July 12, 2019, which was not reflected in an amendment until November 22, 2019; (iii) August 2, 2019, which was not reflected in an amendment until November 22, 2019; and (iv) April 15, 2020, which was not reflected in an amendment until May 21, 2020;
- Respondent's dispositions through open-market or privately-negotiated sale transactions of shares constituting more than 1% of the class of outstanding Cineverse common stock on each of the following dates, none of which were reflected in an amendment until January 13, 2021: (i) September 15, 2020; (ii) December 24, 2020; (iii) December 28, 2020; (iv) December 30, 2020; and (v) December 31, 2020. The January 13, 2021 amendment reported a decline in Xu's beneficial ownership percentage of the class from the approximately 62.7% reported in his last-filed amendment on May 21, 2020 down to approximately 24.8%—less than half of that previously reported.
- Respondent's dispositions through open-market sales of shares constituting more than 1% of the class of outstanding Cineverse common stock during each of the following periods, none of which were reflected in an amendment until August 26, 2021: (i) from February 25, 2021 through March 9, 2021; (ii) from March 10, 2021 through March 15, 2021; (iii) from March 16, 2021 through March 19, 2021; and (iv) from March 22, 2021 through March 23, 2021. The August 26,

2021 amendment reported a decline in Xu's beneficial ownership percentage of the class from approximately 24.75% to 12.95%—approximately half of that previously reported.

20. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-2 thereunder.

#### **Respondent's Remedial Efforts**

21. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

#### **IV.**

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission, for transmission to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional 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 Peixin 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 Thomas Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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, he shall not argue that he is entitled to, nor shall he 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 he 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.

## 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