

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73637 / November 19, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3970 / November 19, 2014

Admin. Proc. File No. 3-15928

In the Matter of

SIMING YANG

ORDER GRANTING
MOTION TO AMEND ORDER
INSTITUTING PROCEEDINGS

The Division of Enforcement requests that we amend the order instituting these proceedings ("OIP") to take account of developments that have occurred since it was issued. The request is unopposed and, for the reasons discussed below, we have determined to grant it.

I. BACKGROUND

On May 27, 2014, following a jury verdict, a district court entered a final judgment¹ against Siming Yang, permanently enjoining him from future violations of Sections 10(b) and 13(d) of the Securities Exchange Act of 1934 and Rules 10b-5, 13d-1, and 13d-2 thereunder and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940.² The complaint alleged, among other things, that Yang, a Chinese citizen who was acting as an investment adviser to a start-up investment firm, Prestige Trade Investments Limited, engaged in a fraudulent "front-running"³ scheme and caused Prestige to file false Schedules 13D with the Commission. After a

¹ The district court also ordered Yang to pay \$150,000 in civil money penalties.

² 15 U.S.C. §§ 78j(b), 78m(d), 80b-6(1) & (2); 17 C.F.R. §§ 240.10b-5, 13d-1, 13d-2. *See SEC v. Siming Yang*, Civil Action No. 12-cv-2473 (N.D. Ill. May 27, 2014), 2014 WL 2198323.

³ "Front-running" refers to a situation where one buyer intentionally trades in front of another, larger, buyer in order to take advantage of any benefit the larger buyer's purchase generates in the market." *In re State Street Bank & Trust Co. Fixed Income Funds Inv. Litig.*, 842 F. Supp. 2d 614, 640 n.18 (S.D.N.Y. 2012).

six-day trial, the jury found Yang liable on the charges of front-running and filing false Schedules 13D.⁴

On June 12, 2014, we instituted this follow-on proceeding against Yang pursuant to Advisers Act Section 203(f).⁵ In the OIP, the Division alleged that, from 2008 until March 30, 2012, Yang was employed as a research analyst by BAMCO, Inc., a New York-based registered broker-dealer and investment adviser. In his answer to the OIP, however, Yang denied that he was employed by BAMCO.

On September 5, 2014, a law judge held a prehearing conference at which Yang's counsel again denied Yang's association with BAMCO (or any registered investment adviser), although he admitted that Yang was employed by one of two affiliated subsidiaries of Baron Capital Group, Inc., an investment management holding company.⁶ The law judge stated that Yang's denial could create a disputed issue of material fact precluding summary disposition "because without [Yang] being associated with an investment adviser, there cannot be any sanctions or action taken under Section 203(f)."⁷ The law judge suggested that the Division consider moving to amend the OIP to address Yang's associational status and thereby obviate the need for a hearing on this issue.

II. Amending the OIP is appropriate

On September 18, 2014, the Division filed a motion to amend the OIP. The Division states that the purpose of the amendment is to address Yang's "equivocation on his employment status and negate the need for a hearing." According to the Division, regardless of which subsidiary Yang may claim as his employer, he nonetheless was associated with a registered broker-dealer and/or registered investment adviser. The amendment identifies BAMCO and the two subsidiaries of Baron Capital Group, Inc. as alternative employers, identifies their registration status, and includes Exchange Act Section 15(b) as an alternative statutory basis for

⁴ The jury did not find Yang liable on the charge that he engaged in insider trading in the stock of Zhongpin Inc.

⁵ 15 U.S.C. § 80b-3(f).

⁶ At trial, Yang admitted that he worked for an entity affiliated with "Baron Capital." Baron Capital Group, Inc.'s affiliated subsidiaries are Baron Capital, Inc., a registered broker-dealer, and Baron Capital Management, Inc., a registered investment adviser. It is not clear from the motion papers what the relationship is between BAMCO and Baron Capital Group, Inc. or its subsidiaries.

⁷ Pursuant to the Commission's Rule of Practice 250, a law judge may grant a motion for summary disposition only if there is no genuine issue with regard to any material fact and the movant is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250.

the OIP. The amendment also clarifies that Yang acted as an unregistered investment adviser to Prestige.

Under Rule of Practice 200(d)(1), we may, at any time, upon motion by a party, amend an OIP to include new matters of fact or law.⁸ We have stated that amendments of OIPs to reflect "subsequent developments"⁹ "should be freely granted, subject only to the consideration that other parties should not be surprised nor their rights prejudiced."¹⁰ The Division's proposed amendment to the OIP meets these standards. It reflects "subsequent developments," *i.e.*, Yang's denial of his employment with BAMCO in his answer to the OIP and at the pretrial hearing, and his admission at that hearing that he was employed by one of two affiliated subsidiaries of Baron Capital Group, Inc. In addition, it can neither surprise nor prejudice Yang. It is therefore appropriate, under the circumstances, to grant the Division's motion to amend the OIP to clarify Yang's employment status and to add Section 15(b) of the Securities Exchange Act of 1934 as an alternative statutory basis for this proceeding.¹¹

Accordingly, IT IS ORDERED that the Division of Enforcement's motion to amend the Order Instituting Proceedings issued on June 12, 2014 against Siming Yang is GRANTED; and it is further

ORDERED that Section I of the Order Instituting Proceedings issued on June 12, 2014, is amended to add that proceedings be "instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934"; and it is further

ORDERED that Section II Paragraph 1 of the Order Instituting Proceedings issued on June 12, 2014, is amended to allege that Siming Yang "was employed as a research analyst with New York-based registered investment adviser, BAMCO, Inc. ("BAMCO"), and/or registered broker-dealer Baron Capital, Inc. and/or registered investment adviser Baron Capital Management, Inc., all affiliated subsidiaries of investment management holding company, Baron Capital Group, Inc."; and it is further

⁸ 17 C.F.R. § 201.200(d)(1).

⁹ *Carl L. Shipley*, Securities Exchange Act Release No. 10870, 1974 WL 161761, at *4 (June 21, 1974).

¹⁰ *Robert David Beauchene*, Exchange Act Release No. 68974, 2013 WL 661619, at *2 (Feb. 25, 2013) (quoting *Charles K. Seavey*, Investment Advisers Act Release No. 1925A, 2001 WL 228030, at *2 (Mar. 9, 2001)).

¹¹ *See, e.g., Seavey*, 2001 WL 228030, at *1-2 (granting motion to amend order instituting proceedings to include Respondent's subsequent guilty plea and sentence to federal money laundering and add Advisers Act Section 203(f) as an alternative statutory basis).

ORDERED that Section II Paragraph 1 of the Order Instituting Proceedings issued on June 12, 2014, is amended to allege that "Yang also acted as the investment adviser to his own investment firm, Prestige Trade Investments Limited ("Prestige")"; and it is further

ORDERED that Section III of the Order Instituting Proceedings issued on June 12, 2014, is amended to institute public administrative proceedings to determine "what, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act."; and it is further

ORDERED that Respondent shall file an amended answer to the allegations contained in the Order Instituting Proceedings, as amended herein, within twenty days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice.¹²

By the Commission.

Brent J. Fields
Secretary

¹² 17 C.F.R. § 201.220.