

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 71824 / March 27, 2014**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3546 / March 27, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15816**

**In the Matter of**

**SHIRLEY KIANG**

**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 Shirley Kiang (“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 her and the subject matter of these proceedings, which are admitted, 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

From August 2008 to approximately June 2009, L&L Energy, Inc. (L&L), a Seattle-headquartered coal company with all of its operations in China – led by its Chairman of the Board and Chief Executive Officer, Dickson Lee – misrepresented in public filings with the Commission that a person served as the company's Acting Chief Financial Officer when, in reality, she never did (hereinafter, the "purported Acting CFO"). In May 2009, the purported Acting CFO became aware that L&L had falsely represented her as the company's actual Acting CFO and asked Shirley Kiang, who was then the company's Audit Committee Chair and a Director, to investigate. Kiang approached Lee regarding the purported Acting CFO's allegations, and he told Kiang that the purported Acting CFO had never served as the company's actual Acting CFO and to not share this information with anyone, including the company's Board of Directors and the public. In August 2009, L&L filed its Form 10-K for the 2009 fiscal year, and it included a false certification required under the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") that – based on Lee's and the other certifying officer's most recent evaluation of the company's internal control over financial reporting – any fraud, whether or not material, involving management had been disclosed to the company's auditors and the company's Audit Committee. Kiang signed this public filing as a Director and Audit Committee Chair when she knew or should have known that the filing contained this false Sarbanes-Oxley certification.

#### Respondent

1. **Shirley Kiang**, age 63, was associated with L&L from 1998 to August 2012 as a board member. Kiang was also a member of L&L's Audit Committee from its inception in July 2008 through August 2012, and was the Audit Committee Chair from approximately July 2008 through at least the filing of L&L's 2009 Form 10-K on August 13, 2009. Kiang is a U.S. citizen, currently living in Thailand.

#### Facts

2. Beginning in approximately April 2008, L&L did not have a CFO, as its prior CFO had just resigned. L&L, led by Lee, wanted to hire an Acting CFO and, to that end, thought of the purported Acting CFO, who had previously been associated with the company as an accountant from 1997 to 2004, and as a director until 2006.

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

3. In a July 14, 2008 email to Lee, the purported Acting CFO rejected an offer to become L&L's Acting CFO.

4. Notwithstanding this rejection, L&L falsely represented that the purported Acting CFO was the company's actual Acting CFO in four separate public filings with the Commission, including the company's Form 10-K for fiscal year 2008, and three subsequent Form 10-Qs for fiscal year 2009. Each filing included a Sarbanes-Oxley certification with the purported Acting CFO's digital signature that she had, among other things, attested to the accuracy of the company's financial statements and the appropriateness of the company's disclosure controls and procedures. The purported Acting CFO, however, never performed any such functions.

5. In May 2009, the purported Acting CFO became aware that L&L had falsely represented her as the company's actual Acting CFO in the above-described filings and sent various emails to Lee, demanding an explanation. In a May 19, 2009 email, Lee wrote to the purported Acting CFO that she "did not perform the work of the Acting CFO."

6. On May 21, 2009, the purported Acting CFO emailed Kiang, who was then the Chair of the company's three person Audit Committee and member of the company's Board of Directors. Prior to this email, Kiang had no interaction with the purported Acting CFO with regard to any L&L business. In the email, the purported Acting CFO told Kiang that she had a "serious and urgent" matter related to L&L's filings that were made without her knowledge and asked her to investigate.

7. Kiang subsequently contacted Lee and asked whether the purported Acting CFO had actually served as the company's Acting CFO, and was informed that the purported Acting CFO had actually served as the company's Acting CFO and was making false allegations in an attempt to obtain money from the company. Kiang contacted no one else, including anyone at the company or the company's external auditors, to investigate whether the purported Acting CFO had actually served as the company's Acting CFO.

8. On June 4, 2009 – after receiving no response from Kiang – the purported Acting CFO emailed her again. The purported Acting CFO asked whether Kiang had investigated the allegations that she had not actually served as the company's Acting CFO, and in the email, included her July 14, 2008 email in which she rejected the offer to be L&L's Acting CFO.

9. After receiving the email, Kiang asked Lee for an explanation. Lee told Kiang that the purported Acting CFO had not actually served as the company's Acting CFO; that he had used the purported Acting CFO's name on L&L's public filings without the purported Acting CFO's permission; told Kiang not to worry about it because it was in the past<sup>2</sup>; told Kiang to not tell anyone about the purported Acting CFO, including the company's Board of Directors or the public; and that, if she shared this information with anyone, L&L's reputation would be affected negatively and its stock price would drop.

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<sup>2</sup> On June 23, 2009, L&L issued a Form 8-K in which it announced that it had hired a California resident as the company's Acting CFO. The California resident, unlike the purported Acting CFO, actually did perform the duties of a CFO.

10. On August 12, 2009, L&L filed its 2009 Form 10-K, which contained a false Sarbanes-Oxley certification that – based on Lee’s and the other certifying officer’s most recent evaluation of the company’s internal control over financial reporting – any fraud, whether or not material, involving management had been disclosed to the company’s auditors and to the company’s Audit Committee. Kiang signed L&L’s 2009 Form 10-K as Audit Committee Chair and a Director, when she knew or should have known that any fraud, whether or not material, involving management had not been disclosed to the company’s auditors and the company’s Audit Committee.

### **Violation**

11. Under Section 21C of the Exchange Act, the Commission may impose a cease-and-desist order upon, among others, any person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation of any provision of the Exchange Act.

12. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rule 13a-1 requires the filing of annual reports. In addition to the information expressly required to be included in such reports, Rule 12b-20 under the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. “The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports.” *SEC v. Savoy Industries*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int’l, Inc.*, 384 F. Supp. 889, 893 (N.D. Tex. 1974)). A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975).

13. L&L violated Exchange Act Section 13(a) and Rules 12b-20 and 13a-1 thereunder by filing an annual report – the 2009 Form 10-K – that included a false Sarbanes-Oxley certification that – based on the CEO’s and the other certifying officer’s most recent evaluation of the company’s internal control over financial reporting – any fraud, whether or not material, involving management had been disclosed to the company’s auditors and the company’s Audit Committee.

14. By engaging in the conduct described above, Kiang caused L&L’s violations of Exchange Act Section 13(a) and Rules 12b-20 and 13a-1 thereunder.

### **IV.**

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Kiang cease and desist from committing or causing any violations and any future violations of Exchange Act Section 13(a) and Rules 12b-20 and 13a-1 promulgated thereunder.

B. To effect compliance with the above-referenced provision and rules of the Exchange Act, Kiang permanently refrain from signing any Commission public filing that contains any certification required pursuant to the Sarbanes-Oxley Act of 2002.

By the Commission.

Jill M. Peterson  
Assistant Secretary