

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78413 / July 26, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3793 / July 26, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17361

In the Matter of

YI CHEN, 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 Yi Chen, CPA (“Respondent” or “Chen”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act

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 thereunder.

of 1934 (“Exchange Act”) and Rule 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:

Summary

1. These proceedings involve insider trading by Yi Chen, a certified public accountant (“CPA”) and the former Corporate Controller of Oplink Communications, Inc. (“Oplink” or “the company”). In October 2014, Chen learned, in the course of her employment, material nonpublic information regarding a planned acquisition of Oplink (“the acquisition”) by Koch Industries, Inc. (“Koch”). Soon thereafter, Chen secretly purchased a total of 4,740 shares of Oplink stock at prices ranging from \$16.57 to \$16.98 per share in two brokerage accounts held in the names of her relatives. On November 19, 2014, Oplink and Koch announced the acquisition to the market, and Oplink’s stock price increased nearly 14%, to \$24.18 per share. In the weeks after, Chen sold all of the Oplink stock in her family members’ accounts, realizing ill-gotten gains of \$34,678.44.

Respondent

2. Chen, age 46, is a resident of Fremont, California and since 2004 has been a CPA licensed to practice in California. Before joining Oplink, Chen worked as an accountant for a

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.

series of publicly-traded companies. From August 2011 until 2016, Chen served as Oplink's Corporate Controller, which allowed her access to Oplink's confidential financial information.

Other Relevant Entity

3. Oplink is a Delaware corporation headquartered in Fremont, California. Oplink designs, manufactures, and sells optical networking components and subsystems. From 2000 to 2015, Oplink filed periodic reports with the Commission and traded on NASDAQ under the ticker symbol "OPLK." On January 2, 2015, Oplink filed a certification and notice of termination of registration under Section 12(g) of the Exchange Act in connection with its acquisition by Koch.

Facts

4. As Oplink's Corporate Controller, Chen was subject at all relevant times to the company's insider trading policies, which prohibited employees from trading in Oplink stock while in possession of "inside information." The policies specifically defined "inside information" to include information regarding "potential tender offers" or a "merger or an acquisition or disposition of significant assets." Chen signed an acknowledgement indicating that she had received, understood, and agreed to comply with these policies.

5. Chen was also subject at all relevant times to Oplink's policy on stock trading by directors, officers, and other members of management. Under this policy, certain Oplink insiders, including Chen, were permitted to trade in Oplink stock only during specified "window" periods following the general public release of the company's annual or quarterly revenues and were otherwise subject to blackout periods. This policy also restricted trading by "family members whose trading activities [were] controlled or influenced" by insiders covered by the policy. Chen signed an acknowledgment indicating that she had received, understood, and agreed to comply with this policy. Chen was subject to a trading blackout period from at least August 30, 2014 through October 30, 2014.

6. After engaging in preliminary discussions regarding a potential business combination, in August 2014 Oplink and Koch entered into a non-disclosure agreement. In the following months, the two companies engaged in a due diligence process with the assistance of outside advisors, and Koch submitted a series of written offers to acquire Oplink.

7. Chen first learned material nonpublic information regarding the acquisition at an October 13, 2014 meeting with Oplink's Chief Financial Officer. Over the next several weeks, Chen worked on due diligence for the acquisition. During that period, Chen participated in meetings and calls with Koch representatives and prepared deal-related work product regarding Oplink's financial condition. Chen knew that information regarding the acquisition was nonpublic, and that she had a duty to refrain from trading while in possession of such information.

8. After obtaining material nonpublic information regarding the acquisition, and although she was subject to a blackout period, Chen purchased 4,740 shares of Oplink stock in two brokerage accounts held in the names of her relatives. From October 21 to 29, 2014, Chen purchased – from her office at Oplink, during working hours – 2,388 shares of Oplink stock at prices ranging from \$16.57 to \$16.93 per share in an account established in the name of her sister. On October 30, 2014, Chen purchased 2,352 shares of Oplink stock at a price of \$16.98 per share in an account established in the name of her mother-in-law.

9. Chen knew, or was reckless in not knowing, that these securities transactions were in breach of her duty to Oplink.

10. Before the market opened on November 19, 2014, Oplink and Koch announced that Koch had agreed to commence a tender offer to purchase all outstanding Oplink stock for \$24.25 per share. In response to the news, Oplink's stock price rose nearly 14%, from \$21.25 per share at the close of the previous day's trading to \$24.18 per share at the close of trading on November 19.

11. In the following weeks, Chen sold all of the Oplink stock in her family members' accounts, realizing total profits of \$34,678.44. In December 2014, the proceeds of trading in Oplink were withdrawn from each of the brokerage accounts. On January 20, 2015, Chen personally received \$28,500 from one of the accounts.

Findings

12. Based on the foregoing, the Commission finds that Chen willfully violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

IV.

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

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

A. Pursuant to Section 21C of the Exchange Act, Chen shall cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 promulgated thereunder.

B. Pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, Chen is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After five (5) years from the date of this Order, Chen 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. Such an application must satisfy the Commission that Respondent's work in her practice before the Commission 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. An independent accountant. Such an application must satisfy the Commission that:
 - (a) Respondent, 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) Respondent, 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 the respondent will not receive appropriate supervision;
 - (c) Respondent 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) Respondent acknowledges her responsibility, as long as Respondent 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 Chen 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 Respondent's

character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

E. Pursuant to Section 21C(f) of the Exchange Act, Chen is prohibited for a period of five (5) years from the date of this Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

F. Chen shall, within 10 days of the entry of this Order, pay disgorgement of \$34,678.44, prejudgment interest of \$1,407.87, and a civil monetary penalty of \$34,678.44, for a total of \$70,764.75, 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 and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty 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 Yi Chen 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 Erin Schneider, Associate Director, Division of Enforcement, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

G. 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.

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.

Brent J. Fields
Secretary