

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80238 / March 14, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3863 / March 14, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17881

In the Matter of

NIMA HEDAYATI,

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 Nima Hedayati (“Respondent” or “Hedayati”) pursuant to Sections 4C¹ and 21C of the Securities

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.

Exchange Act 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 him 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 finds³ that:

Summary

1. These proceedings involve insider trading by Nima Hedayati, a former junior audit staff member at a major public company accounting and audit firm. In October 2015, Hedayati learned, in the course of his employment, material nonpublic information regarding a planned acquisition of KLA-Tencor Corporation (“KLA”) by Lam Research Corporation (“Lam”). Soon thereafter, Hedayati purchased a total of 40 contracts for out-of-the-money KLA call options, both in his own account and in the account of his then-fiancée. Hedayati also advised his mother to trade KLA, and on the basis of this suggestion, his mother purchased 1,400 shares of KLA common stock. On October 21, 2015, Lam and KLA issued a joint press release announcing their entry into a merger agreement. Shares of KLA closed that day at \$63.98, up 19% from the previous day’s close of \$53.86. Collectively, Hedayati and his mother profited from the illegal trades by approximately \$43,000.

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.

³ 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.

Respondent

2. Nima Hedayati, age 34, resides in San Jose, CA. During the relevant time period, Hedayati was an audit staff member employed by Lam's PCAOB-registered independent auditor. Hedayati has passed the CPA exam but does not hold a CPA license.

Other Relevant Entities

3. KLA-Tencor Corporation, a Delaware corporation headquartered in Milpitas, CA, is a manufacturer of equipment used in the creation of semiconductors. At all relevant times, KLA-Tencor's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and was quoted on the NASDAQ Global Select Market under the ticker symbol KLAC.

4. Lam Research Corporation, a Delaware corporation headquartered in Fremont, CA, is a manufacturer of equipment used in the creation of semiconductors. At all relevant times, Lam Research's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and was quoted on the NASDAQ Global Select Market under the ticker symbol LRCX.

Facts

5. During his time as an audit staff member at Lam's auditor, Hedayati participated in trainings and received written policies cautioning him to safeguard confidential information concerning his employer's clients and not to use that information for his own benefit. He also received and was familiar with his employer's code of conduct, which prohibited employees from trading on the basis of material, nonpublic information. Hedayati understood that he had a duty not to disclose confidential client information, and that he had a duty not to buy or sell securities on the basis of nonpublic information he received in the course of his employment.

6. From August 2015 to October 2015, Lam and KLA held meetings and exchanged communications concerning a potential combination. On September 22, 2015, Lam made an offer to acquire KLA at a price of \$32 per share and 0.5 shares of Lam common stock, its third and best offer. On the basis of this offer, Lam and KLA signed an exclusivity agreement on September 24, and from September 29 to October 20, Lam and KLA engaged in mutual due diligence. From October 4 to October 20, Lam and KLA negotiated a merger agreement. On October 20, 2015 the companies' respective boards approved the agreement, and on October 21, the companies publicly announced the intended acquisition.

7. Hedayati became aware of Lam's intent to acquire KLA at an October 2015 meeting where Hedayati and other employees of Lam's auditor were discussing the upcoming Lam year-end 2015 audit and related procedures. During the meeting, Hedayati learned that Lam was going to acquire KLA. During the month of October 2015, and in the course of his employment, Hedayati also reviewed minutes from meetings of the Lam board of directors that made reference to the proposed merger. Hedayati knew that information regarding the proposed merger was

nonpublic, and that he had a duty to refrain from trading while in possession of such information and a duty to refrain from sharing that information with others who might trade on the information.

8. Hedayati subsequently told his mother to “look into” trading KLA. On the basis of this suggestion, and before the Lam-KLA merger was publicly announced, Hedayati’s mother purchased 1,400 shares of KLA common stock.

9. Hedayati knew, or was reckless in not knowing, that his tip to his mother was a breach of his duty of trust and confidence to his employer.

10. On October 19, 2015, Hedayati bought 20 contracts for out-of-the money KLA call options in his brokerage account. He also purchased 20 contracts for out-of-the money KLA call options in the brokerage account of his fiancée at the time.

11. Hedayati knew, or was reckless in not knowing, that these purchases were a breach of his duty of trust and confidence to his employer.

12. Lam and KLA issued a joint press release announcing their entry into the merger agreement prior to the opening of the markets on October 21, 2015. Shares of KLA closed that day at \$63.98, up 19% from the previous day’s close of \$53.86.

13. Hedayati sold all the options he had purchased, in both his own account and his fiancée’s account, soon after the markets opened on October 21, realizing profits of \$27,971.59.

14. Hedayati’s mother’s profited by \$15,056.00. She sold her KLA shares gradually over a period of two months.

15. Hedayati’s mother subsequently thanked Hedayati for the tip and sent him \$2,000 as a “thank you” gift.

16. Hedayati’s employer terminated Hedayati’s employment in January 2016, when it discovered the conduct described above.

Findings

17. As a result of the conduct described above, the Commission finds that Hedayati willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

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

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

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

B. Pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, Hedayati 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, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as an accountant.

D. Respondent shall pay disgorgement of \$43,027.59, prejudgment interest of \$1,269.70 and civil penalties of \$43,027.59, 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). Payment shall be made in the following installments: (1) Respondent shall pay disgorgement of \$43,027.59, prejudgment interest of \$1,269.70, and civil penalties of \$15,056.00 within 10 days of the entry of the Order, and (2) Respondent shall pay civil penalties of \$27,971.59 within a year of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

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 Nima Hedayati 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.

E. 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.

Brent J. Fields
Secretary