

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81744 / September 28, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18227

In the Matter of

FENGJIU ZHANG and

XIANLI KONG,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND 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 Fengjiu Zhang (“Zhang”) and Xianli Kong (“Kong”) (together, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent 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 Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

Summary

1. These proceedings involve insider trading in the securities of the Canadian oil company Nexen Inc. ("Nexen") before a pre-market-open announcement on July 23, 2012 that the Chinese oil company CNOOC Limited (collectively with affiliates, "CNOOC") had agreed to acquire Nexen for approximately \$15.1 billion (the "Announcement").

2. During the months leading up to the Announcement, Respondent Zhang was President and CEO of CNOOC's Canadian subsidiary, CNOOC Canada Inc. ("CNOOC Canada"), and knew about the existence and status of the CNOOC-Nexen negotiations through his work at CNOOC Canada. Less than a week before the Announcement, Zhang contacted a longtime business acquaintance residing in the United States ("Trader A"), and asked her to purchase Nexen stock on Zhang's behalf. Trader A complied and purchased 9,000 shares of Nexen stock on July 18, 2012 in her U.S. brokerage account, using her own funds. On October 29, 2012, Trader A sold the stock, generating a profit of \$65,769.20.

3. In addition, on Friday, July 20, 2012, the last trading day before the Announcement, Zhang tipped his longtime friend Kong with material nonpublic information about the impending Nexen acquisition. Later that same day, Kong purchased 1,500 shares of Nexen stock, which he sold approximately ten days after the Announcement, realizing a profit of \$11,493.23.

4. By asking Trader A to buy Nexen stock on his behalf, and by deliberately tipping Kong to trade Nexen securities, Zhang breached his duty to his employer, CNOOC. Kong, for his part, traded on the basis of Zhang's tip even though Kong knew or had reason to know that Zhang's disclosure of the merger information was improper. As a result of their conduct, Zhang and Kong violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondents

5. Zhang, 53 years old, is a resident of Beijing, China and a citizen of the People's Republic of China. Zhang has been employed by CNOOC in various capacities since 1985. From early 2012 to February 2013, Zhang was President and CEO of CNOOC Canada, based in Calgary, Alberta, Canada. Following CNOOC's acquisition of Nexen, Zhang continued to work for CNOOC in Calgary until early 2017, at which time he moved back to China and was transferred to a different position within CNOOC.

6. Kong, 53 years old, is a resident of Murrieta, California. Kong is the owner of a private company that provides engineering services to the oil and gas industry.

Relevant Entities and Individual

7. CNOOC is an energy company incorporated and headquartered in the Hong Kong Special Administration Region, China. At all relevant times, CNOOC's common stock was listed on the Stock Exchange of Hong Kong and on the New York Stock Exchange.

8. Nexen was a Canadian corporation headquartered in Calgary, Alberta, Canada. Before its acquisition by CNOOC, Nexen's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange and the Toronto Stock Exchange. On February 25, 2013, Nexen was acquired by CNOOC.

9. Trader A is a resident of Houston, Texas and the owner of a private company that provides technology services to oil and gas companies, including CNOOC.

Background

10. Zhang and Kong attended the same university in China in the 1980s and became friends after graduating. They remained friends for more than two decades, even after first Kong, and then Zhang, left China. On occasion, Kong asked Zhang for business-related favors. For example, in 2012, Kong asked Zhang for advice about selling his company's services to CNOOC, and Zhang helped Kong by putting him in contact with a CNOOC division that needed the type of services offered by Kong's company.

11. Zhang became friends with Trader A in approximately 2000, when they both lived in China. They socialized in group settings and occasionally played golf together. Zhang stayed in touch with Trader A after she moved to the United States approximately in 2012.

12. In or about January 2012, Zhang relocated from Beijing to Calgary, Canada, to serve as President and CEO of CNOOC Canada. In this role, Zhang was subject to CNOOC's Code of Ethics for Directors and Senior Officers, which expressly prohibited him from trading on the basis of material nonpublic information gained through his employment or "giving 'tips' on material non-public information." The Code of Ethics also required him to comply with U.S. insider trading laws.

13. Shortly after his arrival in Canada, Zhang learned that CNOOC was exploring the acquisition of Nexen. On February 24, 2012, Zhang received an email from a senior CNOOC official that included a link to a shared network folder containing information about the possible Nexen acquisition. The email cautioned Zhang and the other recipients that information about the potential Nexen acquisition should be kept confidential.

14. On May 4, 2012, CNOOC's Board of Directors authorized CNOOC's management to make an initial offer to Nexen. Between May 16, 2012 and July 20, 2012, delegations of senior CNOOC officials from China made three trips to Canada to negotiate the acquisition with Nexen representatives. Zhang was responsible for hosting the CNOOC delegations and making accommodation, dining, and other local arrangements for them. During this period, Zhang also

attended at least one meeting between senior officials of CNOOC and Nexen concerning the acquisition.

15. On the evening of July 17, 2012, just days before a CNOOC delegation was due to arrive in Canada to finalize the terms of the Nexen acquisition, Zhang placed a series of calls to Trader A. He spoke with Trader A for approximately six minutes. The following morning, July 18, 2012, Zhang sent Trader A a text message. In the course of these telephone contacts on July 17 and 18, Zhang asked Trader A to purchase Nexen stock on his behalf. Trader A, who believed that Zhang would have difficulty purchasing the stock on his own because he was a Chinese citizen, agreed to help Zhang.

16. The next day, July 19, 2012, Trader A purchased 9,000 shares of Nexen stock in her brokerage account, on Zhang's behalf, for a total of approximately \$152,828.

17. When Zhang requested that Trader A purchase Nexen securities for him, he was in possession of material nonpublic information about CNOOC's impending acquisition of Nexen and expected to personally profit from Trader A's trading in Nexen securities. By using material nonpublic information for his own anticipated gain, Zhang breached his fiduciary duty, or a similar duty of trust or confidence, to his employer CNOOC.

18. On the morning of Friday, July 20, 2012, the last trading day before the Announcement, Zhang called Kong, but did not reach him. Within minutes, Kong returned Zhang's call, and the two spoke for four minutes. Within hours of this call, Kong purchased 1,500 shares of Nexen stock in his brokerage account for a total of approximately \$25,874.

19. During the July 20, 2012 telephone call, Zhang tipped material nonpublic information about the Nexen acquisition to his friend Kong with the expectation that Kong would trade on the basis of this information. In so doing, Zhang breached the fiduciary duty, or a similar duty of trust or confidence, that he owed his employer CNOOC.

20. Kong purchased Nexen stock on July 20, 2012, while in possession of material nonpublic information about the impending acquisition of Nexen, disclosed to him by Zhang. At that time, Kong knew or recklessly disregarded that the information was material and nonpublic, and he also knew or had reason to know that Zhang had disclosed the information improperly, in breach of Zhang's duty to CNOOC.

21. On the morning of Monday, July 23, 2012, before market open, Nexen and CNOOC publicly announced that CNOOC would acquire Nexen for approximately \$15.1 billion or \$27.50 per share, which represented a premium of more than 60% to Nexen's closing price of \$17.06 on Friday, July 20, 2012. On the day of the Announcement, Nexen's stock price rose by \$8.84 per share, or approximately 52%, and closed at \$25.90 per share.

22. On August 2, 2012, Kong sold all of his Nexen shares, realizing a profit of \$11,491.23.

23. Shortly after the Announcement, FINRA launched an inquiry into possible insider trading in Nexen securities in advance of the Announcement. On September 27, 2012, at the request of FINRA, CNOOC attorneys sent Zhang, along with certain other CNOOC employees, a list of individuals and entities who had purchased Nexen securities before the Announcement, and asked Zhang if he knew any of the traders on the list. The list of traders included, among other names, Kong and Trader A. On October 3, 2012, Zhang responded that he did not know any of the individuals or entities on the FINRA list.

24. On October 29, 2012, Trader A sold all of the Nexen shares that she had purchased on Zhang's behalf, generating a profit of \$65,769.20. Trader A later asked Zhang what to do with the profits, but Zhang declined to give her any instructions. Trader A has placed this profit amount, together with interest of \$9,534.64 for a total of \$75,303.84, in escrow pending the resolution of this matter and has agreed to pay these funds to the Commission upon entry of this Order, within 14 days of the entry of this Order.

Violations

25. As a result of the conduct described above, Zhang and Kong violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

A. In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Offer of Settlement of Fengjiu Zhang. Accordingly, it is hereby ORDERED that:

1. Pursuant to Section 21C of the Exchange Act, Zhang 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.

2. Pursuant to Section 21C(f) of the Exchange Act, Zhang be, and hereby is, barred 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 [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] for a period of three (3) years from the entry of this Order.

3. Zhang shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$77,260.43 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 is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

4. Zhang shall pay disgorgement of \$77,260.43, plus prejudgment interest of \$11,266.25, for a total of \$88,526.68, to the Commission for transfer to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act. Zhang's monetary obligations under this paragraph shall be offset, dollar for dollar, upon the

Commission's receipt of the \$75,303.84 currently in escrow which shall be paid to the Commission pursuant to paragraph III.24 of this Order, within 14 days of the entry of this Order. Zhang's monetary obligations shall further be offset, dollar for dollar, by Kong's payment of disgorgement and prejudgment interest (but not penalties) pursuant to paragraph IV.B.2 of this Order. Commission's counsel in these proceedings will notify counsel for Zhang of its receipt of offsetting payments within 28 days of the entry of this Order. Zhang shall pay all amounts due under this paragraph, after offsetting payments, if made, within 14 days of receiving such notice. If payment in full of Zhang's monetary obligations under this paragraph is not made within 42 days of the entry of this Order, interest on the balance due shall accrue pursuant to SEC Rule of Practice 600.

B. In view of the foregoing, the Commission further deems it appropriate to impose the sanctions agreed to in the Offer of Settlement of Xianli Kong. Accordingly, it is hereby ORDERED that:

1. Pursuant to Section 21C of the Exchange Act, Kong 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.

2. Kong shall, within 14 days of the entry of this Order, pay disgorgement of \$11,491.23, prejudgment interest of \$1,731.61 and be liable for these disgorgement and interest amounts jointly and severally with Zhang, and pay an individual civil money penalty in the amount of \$11,491.23 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 is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717.

C. Payments pursuant to this Order must be made in one of the following ways:

- (1) Respondents and Trader A may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents and Trader A 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) Respondents and Trader A 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 Fengjiu Zhang or Xianli Kong as a Respondent in these proceedings, or Trader A as the party making the payment, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Joseph G. Sansone, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

D. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payments of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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 further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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