

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10525 / July 24, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83693 / July 24, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18614

In the Matter of

YAO LI,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Yao Li (“Li” or “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 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 Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and 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 that:

Summary

1. These proceedings involve serial insider trading in the securities of Alliance Fiber Products, Inc. ("AFOP"), a Silicon Valley company that sold fiber optic products, by Respondent Yao Li, who served as the company's Vice President of Technology. From June 2014 through February 2016, Li, by virtue of his position as a senior executive at AFOP, learned highly sensitive information about AFOP's financial performance in the weeks before its quarterly earnings announcements. In violation of the duty of trust and confidence he owed to AFOP and its shareholders, Li traded the securities of AFOP based on this material nonpublic information by short-selling AFOP stock for a realized profit of \$120,124 and selling AFOP stock to avoid losses of \$76,079 in advance of three disappointing earnings announcements for Q2 2014, Q3 2015, and Q4 2015.

Respondent

2. Yao Li, age 59, is a resident of Newark, California. Li joined AFOP in 2002 and served as the company's Vice President of Technology at all relevant times.

Other Relevant Entity

3. Alliance Fiber Optic Products, Inc. ("AFOP") was a Delaware corporation headquartered in Sunnyvale, California with operations in Taiwan and China. AFOP designed and manufactured high performance fiber optic components and integrated modules. AFOP traded on NASDAQ from November 21, 2000 to June 6, 2016 under the ticker "AFOP" and filed periodic reports with the Commission prior to Corning's acquisition of the company. On June 6, 2016, NASDAQ filed a Form 25 with the Commission under Section 12(b) of the Exchange Act, thereby delisting AFOP's shares.

Facts

Li Regularly Learned Material Nonpublic Information About AFOP

4. As AFOP's VP of Technology, Li regularly learned critical, nonpublic information about the company's financial performance well before its quarterly earnings announcements. Throughout each quarter, Li—who was responsible for tailoring the company's products to its customers—learned highly sensitive information about AFOP's customer orders and production forecasts during monthly and other meetings with senior AFOP personnel. Li also learned material nonpublic information about AFOP's sales progress against its quarterly revenue targets, as well as updates to the company's internal revenue forecasts, during regular meetings with AFOP's CEO, AFOP's VP of Sales, and other senior executives.

AFOP's Policies Prohibited Li from Trading AFOP Securities Based on Confidential Information He Learned about AFOP's Sales and Revenues

5. At all relevant times, Li was subject to multiple AFOP policies that prohibited employees from trading in AFOP securities on the basis of material nonpublic information. The company's insider trading policy specifically listed "actual, estimated or projected revenues" and "the gain or loss of a particular product sale" as examples of material information. Li signed written acknowledgments of all these policies when he started his employment at AFOP.

6. AFOP's insider trading policy also prohibited employees from short selling AFOP stock. A short sale is the sale of a security that the seller does not own, or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. A short seller later closes out the position by purchasing the equivalent securities on the open market, or by using an equivalent security it already owned, and returning the security to the lender. In general, short selling is used to profit from an expected downward price movement. As described below, Li profited by short selling AFOP stock in advance of three disappointing earnings announcements that each resulted in stock price declines.

7. Li was also subject at all relevant times to AFOP's quarterly blackout periods. During these periods, which encompassed the first and third months of each fiscal quarter through two days after the relevant earnings announcement, employees were prohibited from buying or selling AFOP securities. Li received quarterly emails reminding him of these blackout periods.

Li Engaged in Insider Trading by Short-Selling AFOP Stock for Profits and Selling AFOP Stock to Avoid Losses in Advance of Disappointing Earnings Announcements

8. Contrary to the duty he owed to AFOP and its shareholders, Li repeatedly traded AFOP securities on the basis of material nonpublic information he learned about AFOP's financial performance before AFOP's disappointing quarterly announcements for Q2 2014, Q3 2015, and Q4 2015. Li traded AFOP stock in accounts he owned jointly with his wife and in accounts that nominally belonged only to his wife. AFOP did not monitor these accounts, and the brokerage firms that housed the accounts were unaware of the AFOP policies restricting Li's trading in AFOP stock. As discussed below, over these three quarters, Li's unlawful short sales of AFOP stock reaped \$120,124 in illegal profits, and his illegal sales of AFOP stock enabled him to avoid an additional \$76,079 in losses.

9. **Q2 2014 Trades:** In or about June 2014, Li learned that AFOP likely was going to miss its revenue guidance for Q2 2014 (which ended June 30, 2014) through various discussions and meetings with other AFOP senior personnel. After acquiring this highly confidential information, Li sold short AFOP stock, and sold additional AFOP shares on seven separate dates between June 9 and July 24, all of which were within the company's blackout period. After AFOP publicly announced that it had missed its guidance for Q2 2014 on July 28, 2014, the company's stock price declined 21%, from \$16.59 per share to \$13.17 per share, by the close of the next business day. As a result of his trades, Li realized \$13,907 in profits from his short sales and avoided \$74,142 in losses.

10. **Q3 2015 Trades:** In or about September 2015, Li learned that AFOP likely was going to miss its revenue guidance for Q3 2015 (which ended September 30, 2015) through various discussions and meetings with other AFOP senior personnel. After acquiring this highly confidential information, Li sold short AFOP stock on thirteen separate dates between September 2 and October 28, all of which were within the company's blackout period. After AFOP publicly announced that it had missed its guidance for Q3 2015 on October 28, 2015, the company's stock price declined 23%, from \$18.87 to \$13.80, by the close of the next business day. As a result of his trades, Li realized \$69,907 in profits from his short sales.

11. **Q4 2015 Trades:** In or about December 2015, Li learned that AFOP likely was going to miss its revenue guidance for Q4 2015 (which ended December 31, 2015) through various discussions and meetings with other AFOP senior personnel. After acquiring this highly confidential information, Li sold or sold short AFOP stock on fourteen separate dates between December 2, 2015 and February 17, 2016, all of which were within the company's blackout period. After AFOP publicly announced that it had missed its guidance for Q4 2015, the company's stock price dropped 16% on the announcement, from \$14.32 to \$12.03, by the close of the next business day. As a result of his trades, Li realized \$36,310 in profits from his short sales and avoided \$1,937 in losses.

12. Li knew, or was reckless in not knowing, that his short-sales of AFOP stock and sales of AFOP stock described above violated his duty to AFOP and its shareholders by trading in AFOP securities on the basis of material nonpublic information he learned in the course of his employment.

Violations

13. As a result of the conduct described above, Li violated Section 17(a) of the Securities Act and 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 Li's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Li cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Li 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.

C. Li shall, within 10 days of the entry of this Order, pay disgorgement of \$196,203 and prejudgment interest of \$23,062 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.

D. Li shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$196,203 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.

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 Yao Li 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 Regional Director, Division of Enforcement, Securities and Exchange Commission, 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