

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84764/ December 10, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18918

In the Matter of

LAI GUANGLIN (ALAN),

Respondent.

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 Lai Guanglin (also known as Alan Lai) (“Lai” 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 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 Respondent’s Offer, the Commission finds¹ that:

¹ 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.

Summary

1. Lai, the Executive Chairman of the Board of Directors and principal shareholder of Agria Corporation (“Agria”), violated Exchange Act Section 10(b) and Rules 10b-5(a) and (c) thereunder by engaging in a fraudulent scheme to manipulate the market price of Agria’s American Depository Shares (“ADSs”). The scheme involved the use of nominee brokerage accounts to engage in trading, including “marking the close,” in order to inflate the price of Agria’s ADSs and thereby satisfy a listing standard of the New York Stock Exchange (“NYSE”). Lai also violated Exchange Act Section 10(b) and Rule 10b-5(b) thereunder by making materially misleading public statements regarding how Agria regained compliance with the NYSE’s listing standard.

Respondent

2. **Lai Guanglin**, age 54, is a citizen of Singapore and resident of Hong Kong, China. Lai is Agria’s founder and largest shareholder, owning in excess of 40% of its shares. Lai has served as Chairman or Executive Chairman of the board of directors since the company was formed. At various times he also served as Chief Executive Officer or co-Chief Executive Officer.

Related Entity

3. **Agria** is a Cayman Islands company with its corporate headquarters in Hong Kong and operations in China, New Zealand, and Australia. Agria is a foreign private issuer whose ordinary shares were registered with the Commission pursuant to Exchange Act Section 12(b). Agria’s American Depository Shares (“ADSs”), each representing two ordinary shares, traded on the NYSE under the symbol “GRO.” The NYSE suspended trading in Agria’s ADSs on November 3, 2016 and delisted the ADSs on January 2, 2017.

Agria Faces Threat of Delisting from the NYSE

4. Agria’s ADSs began trading on November 7, 2007. The price opened above \$16 per ADS but declined in the following years. By July 2011, the price was trading below \$1, and the NYSE notified Agria that the company was not in compliance with the Exchange’s listing standard, which required Agria to maintain a minimum average closing price of \$1 per ADS over a consecutive 30-day trading period.

5. In July 2012, the NYSE notified Agria for the second time that its ADSs had failed to maintain a minimum average closing price of \$1 over a consecutive 30-day trading period. The NYSE gave Agria six months to correct the deficiency or face possible delisting. Following the notification, Agria’s ADS price remained, with brief exceptions, below the \$1 threshold.

6. In December 2012, Agria’s management advised the NYSE that it would attempt to increase its ADS trading price by “effecting a reverse split of its ordinary shares on a 3-for-1 basis in conjunction with a change in its ADS to ordinary share ratio from 2-to-1 to 1-to-1.” On January 8, 2013, Agria filed a Form 6-K announcing the reverse split proposal. The proposal was subject to shareholder approval at Agria’s annual shareholder meeting in April 2013.

7. Throughout January and February 2013, Agria's ADSs remained below the NYSE's \$1 minimum listing standard. From January 9 to January 30, 2013, the closing price gradually moved from \$0.70 to a high of \$0.81, before falling back to \$0.75 on March 6, 2013.

8. By March 2013, Lai and Agria's management were advised that the proposed reverse split would require a reimbursement payment of more than \$3.5 million to Agria's ADS depository bank. Because Agria was managing a tight cash flow, the company decided to abandon the reverse split proposal.

Lai Manipulates the Market Price for Agria's ADSs

9. On March 7, 2013, Lai initiated a scheme to manipulate the price of Agria's ADSs, with the objective of lifting the price above \$1 and maintaining it at that level for 30 consecutive trading days. These activities were undertaken through two nominee brokerage accounts for the purpose of supporting Agria's stock price. The accounts were opened with a U.S. broker-dealer in the names of two persons associated with Lai. Lai funded the accounts using family members and employees as intermediaries and coordinated the trading in the accounts.

10. On March 7 and 8, 2013, Lai arranged the transfer of \$2.3 million through his personal assistant into one of the nominee brokerage accounts. After receiving the funds, Lai's associate began placing large limit orders – frequently priced at or above the best offer and near or at the close of trading for the day – successfully raising the ADS price from \$0.73 to \$1.14. For the next 30 days, Lai's business associates used a combination of buying on the best offer and large, layered limit orders on the bid to maintain the price above \$1. The pending orders signaled an artificially high market demand for Agria's ADSs.

11. On March 7, 2013, one of Lai's two associates placed ten purchase orders for 80,000 ADSs, eight of which were buy limit orders priced above the best offer and placed in the last 15 minutes of the close of trading. On March 8, 2013, the associate submitted 63 purchase orders for more than 460,000 ADSs. The volume of orders exceeded by a factor of 14 the previous average daily trading volume. Forty-five of the orders were priced above the best offer and 38 of those were above \$1. The associate placed 33 buy limit orders in the last hour of trading, constituting 39% of the total daily volume and 70% of the volume in the last hour. The price of Agria's ADSs finally breached \$1 around 3:15 pm on March 8, 2013.

12. Once Agria's ADSs reached the \$1 target, Lai's two associates traded on 30 of the following 31 trading days. In this period, the traders averaged 22 orders per day, most of which were buy limit orders. They used a combination of consistent buying on the best offer with large buy limit orders on the bid to hold the price above \$1. The prices they submitted often escalated over the course of the trading day to build a "wall" of orders that would support Agria's price. For example, on March 19, 2013 before the market open, Lai's associates submitted buy orders for 20,000 ADSs at \$1.02, 40,000 ADSs at \$1.03, and 10,000 ADSs at \$1.04. By 10:00 am that day, the wall began to crumble when their orders were executed – the 10,000 ADSs at \$1.04 were picked up by the market, as were 32,700 of the 40,000 ADSs at \$1.03. The two traders responded before 11:00 am by rebuilding the wall with additional buy limit orders for 80,000 ADSs at \$1.02

and 40,000 ADSs at \$1.03. They finished with 18 buy limit orders, 15 of which were at the best offer in the last three hours of the trading day.

13. Similarly, on every day between March 19 and 24, 2013, the two traders started the day with buy limit orders for 80,000 ADSs at \$1.02. These orders were 1.7 times Agria's average daily trading volume over the preceding 12 months.

14. The purchases made by Lai's two associates accounted for approximately 46% of Agria's total ADSs traded between March 7 and April 23, 2013 and dominated the end-of-day trading. Lai's associates purchased, on average, over half (52%) of the ADSs traded in each day's last hour of trading. By dominating the market at the end of the trading day, the two traders were able to influence the closing price of record.

Lai Issues Materially Misleading Public Statements

15. Following the manipulative trading, Agria issued, on April 24, 2013, a press release advising: "As the price of the Company's ADSs has remained above \$1.00 for more than thirty consecutive trading days, the Company expects to regain compliance with the NYSE's minimum average closing price continued listing standard." The release further advised that Agria's board of directors had therefore concluded that the reverse split and ADS ratio change previously announced were not necessary and would not be implemented.

16. The April 24, 2013 press release furnished to the Commission as part of Agria's Form 6-K was materially misleading. The statement that "the Company's ADSs has remained above \$1.00 for more than thirty consecutive trading days" would have led a reasonable investor to believe that the ADS price increase was the result of Agria's economic performance and overall market conditions, rather than the product of coordinated efforts to manipulate the price. The published statement therefore failed to include material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

17. The April 24, 2013 press release was authorized by Lai and included a quotation from him. Lai's remarks included a "commitment . . . to deliver shareholders' value, preferably with and through organic growth and efforts." Lai went on to state that the proposed "reverse share split should only be used as an incremental tool towards achieving this object." Lai's comment, in the context in which it was made, would have led a reasonable investor to believe that the proposed reverse share split was made unnecessary by Agria's "organic growth and efforts," rather than by Lai's efforts to manipulate the ADS price.

Legal Standards and Violations

18. Under Exchange Act Section 21C(a), the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other 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.

19. Exchange Act Section 10(b) makes it unlawful “[t]o use or employ, in connection with the purchase or sale of any security[,],... any manipulative or deceptive device or contrivance in contravention of” rules enacted by the Commission. Rule 10b-5 implements Section 10(b) and makes it unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security: (a) to employ any device, scheme, or artifice to defraud; (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. The term “manipulative” refers to conduct “intended to mislead investors by artificially affecting market activity.” *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 476 (1977).

20. “‘Marking the close’ is the practice of attempting to influence the closing price of a stock by executing purchase orders at or near the close of the market.” *Thomas C. Kocherhans*, Exchange Act Release No. 36556, 60 SEC Docket 2211 (Dec. 6, 1995). The elements of “marking the close” are: “(1) conduct evidencing a scheme to mark the close – *i.e.* trading at or near the close of the market so as to influence the price of a security;’ and (2) ‘scienter, defined as a mental state embracing intent to deceive, manipulate or defraud.’” *Koch LLC v. SEC*, 793 F. 3d 147, 152 (D.C. Cir. 2015) (quoting *In the Matter of Donald L. Koch & Koch Asset Mgmt., LLC*, 108 SEC Docket 4081, 2014 WL 1998524, at *9 & n.97 (May 16, 2014) (Commission Opinion)).

21. Lai violated Exchange Act Section 10(b) and Rules 10b-5(a) and (c) thereunder, by engaging in a fraudulent scheme to manipulate the price of Agria’s ADSs, through trading, including marking the close, in order for Agria to regain compliance with the NYSE minimum listing standards for its ADSs.

22. Lai further violated Exchange Act Section 10(b) and Rule 10b-5(b) by making materially misleading statements in Agria’s press release on April 24, 2013 that was filed with the Commission as part of Agria’s Form 6-K.

IV

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

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

A. Respondent Lai cease and desist from committing or causing any violations and any future violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder.

B. Respondent Lai be, and hereby 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 Exchange Act Section 12 or that is required to file reports pursuant to Exchange Act Section 15(d).

C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$400,000 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 or 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 Lai 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 Charles E. Cain, Chief, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it 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 it 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