

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **YUNSHEN XING, CA**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Yunshen Xing, CA
255 Duncan Mill Road
Suite 203
TORONTO, ON M3B 3H9

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made June 3, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on June 3, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against Yunshen Xing, CA, a member of the Institute.
2. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Xing attended, and was represented by counsel, Peter Wardle.
3. The decision of the panel was made known at the conclusion of the hearing on June 3, 2009, and the written Decision and Order sent to the parties on June 10, 2009. These reasons, given pursuant to Bylaw 574, contain the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

4. Prior to the taking of Mr. Xing's plea, the Professional Conduct Committee moved to amend the charges before the Discipline Committee to conform to the evidence to be heard. Mr. Xing, through his counsel, did not object to the amendments, and the panel ordered they be made. The following charges, as amended at the hearing, were laid against Mr. Xing by the Professional Conduct Committee on November 12, 2008:

1. THAT the said Yunshen Xing, in or about the period November 3, 2006 through March 16, 2007, while a director of and employed as CEO and CFO of "CC Corp.," failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct in that he effected a transaction causing "CC Corp." to lend \$1 million to a related party, "DC Corp." without notifying or obtaining approval from "CC Corp's" board of directors.

2. THAT the said Yunshen Xing, in or about the period November 2, 2006 through March 16, 2007, while a director of and employed as CEO and CFO of "OC Corp," failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct in that he effected a transaction causing "OC Corp." to borrow \$1.3 million for the purpose of lending those funds to a related party, "DC Corp." without notifying or obtaining approval from "OC Corp's" board of directors.
3. THAT the said Yunshen Xing, in or about the period November 1, 2006 through May 1, 2007, while ~~a director of and employed as~~ *retained as a consultant to, and acting as the de facto* CEO and CFO of "DC Corp," failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct in that he effected a transaction causing "DC Corp." to lend \$3.6 million to an unrelated party, "AM Corp." without notifying or obtaining approval from "DC Corp's" board of directors.
4. THAT the said Yunshen Xing, in or about the period November 30, 2006 through January 18, 2007, while a director of and employed as CEO and CFO of "CC Corp.," prepared the financial statements for "CC Corp." for the three month and nine month periods ended November 30, 32006, which he knew were to be filed with the Ontario Securities Commission on behalf of "CC Corp." and which he knew or ought to have known contained false or misleading representations contrary to Rule 205 of the Rules of Professional Conduct.
5. THAT the said Yunshen Xing, on or about January 18, 2007, signed a Certificate of Interim Filings which he knew was to be filed with the Ontario Securities Commission on behalf of "CC Corp." and which he knew or ought to have known contained false or misleading representations, contrary to Rule 205 of the Rules of Professional Conduct:
 - a. in his capacity as CEO of "CC Corp."; and
 - b. in his capacity as CFO of "CC Corp."
6. That the said Yunshen Xing, in or about the period November 1, 2006 through July 25, 2007, failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional conduct in that he breached TSX Venture Exchange policies for Capital Pool Companies:
 - a. In his capacity as director, CEO and CFO for "CC Corp.";
 - b. In his capacity as director, CEO and CFO for "OC Corp."; and
 - c. In his capacity as ~~director~~ *consultant to and de facto*, CEO and CFO for "DC Corp."

PLEA

5. Mr. Xing entered a plea of guilty to the charges, as amended, and acknowledged that he understood that, on the basis of the plea of guilty and on that basis alone, he could be found guilty of the charges.

EVIDENCE

6. The evidence for the Professional Conduct Committee was presented by way of an Agreed Statement of Facts (Exhibit 2) and a Document Brief (Exhibit 3). Mr. Wardle called no evidence.

7. In or around 2005 and 2006, Mr. Xing founded three TSX Venture Exchange Capital Pool Companies (CPCs) – CNR Capital Corporation (CC Corp.), Onsino Capital Corporation (OC Corp.), and Dragon Capital Corporation (DC Corp.). Mr. Xing was a shareholder in all three companies. He was the CEO and CFO of CC Corp. and OC Corp. As TSX rules prohibited him from being the CEO or CFO of more than two CPCs, he was listed as a consultant for DC Corp., although he performed the functions of CEO and CFO for that company. He was responsible for the financial statement preparation for all three companies.

8. The purpose of a CPC is to use investors' funds to effect qualifying transactions (QTs) by which a CPC can acquire significant assets other than cash, usually by an amalgamation, acquisition, merger or other arrangement with a target company (Target).

9. TSX policy forbids making loans or advances to a Target, except for an aggregate of \$225,000 as a refundable deposit or secured loan. TSX policy also requires listed issuers to have two signatories on every cheque.

10. Mr. Xing initially invested \$75,000 in CC Corp. (of a total capitalization of \$500,000). He was the sole signatory for CC Corp. On November 2, 2006, he authorized a loan of \$1 million from CC Corp. to DC Corp., to facilitate a QT by DC Corp. The Board of CC Corp. had no knowledge of this loan, and had not given approval. There was no loan agreement, the loan was unsecured, did not bear interest, and had no specified terms of repayment. The loan was repaid on March 26, 2007, on Mr. Xing's sole authorization, after DC Corp.'s QT was completed.

11. Mr. Xing prepared the Management Discussion and Analysis (MD&A) and the financial statements for CC Corp. for the three and nine month periods ending November 30, 2006. The MD&A does not disclose the loan, and the financial statements mischaracterize it as "cash and cash equivalents" and do not disclose it was a related party transaction. The statements were filed with SEDAR, along with certifications of interim filings signed by Mr. Xing as CEO and CFO.

12. The Board of CC Corp. only became aware of the loan when the year-end draft financial statements were circulated. The three and nine month statements had to be restated, and CC Corp., on July 5, 2007, requested a halt in trading, which was later changed to a suspension.

13. Mr. Xing initially invested \$80,000 (of \$500,000 total capitalization) in OC Corp. He was the sole signatory for OC Corp. On November 3, 2006, he authorized a loan of \$1.3 million from OC Corp. to DC Corp., to facilitate a QT by DC Corp. In order to make that loan, Mr. Xing caused OC Corp. to borrow \$1.3 million from a bank. The Board of OC Corp. neither knew of nor approved the loan. There was no loan agreement, the loan was unsecured, did not bear interest, and had no specified terms of repayment.

14. Mr. Xing caused DC Corp. to repay the loan once the QT was completed, and OC Corp. repaid the bank. The Board of OC Corp. did not become aware of the loan until the draft financial statements for fiscal 2006 were circulated.

15. Mr. Xing initially invested \$70,000 (of the total \$500,000 capitalization) in DC Corp. He was the sole signatory for DC Corp. Mr. Xing negotiated a QT on behalf of DC Corp. with a private mining company in China (AM Corp.), an unrelated party. In or around November 2006, Mr. Xing authorized a loan of \$3.6 million from DC Corp. to AM Corp. \$2.3 million of the funds were obtained by related party loans (\$1 million from CC Corp. and \$1.3 million from OC Corp.). The loan to AM Corp. was required to satisfy a Chinese regulation requiring minimum capitalization prior to AM Corp. being listed on the TSX.

16. The loan to AM Corp. was made without the knowledge or approval of the DC Corp. Board of Directors, nor was the Board aware of the related party source of the funds. Both the DC Corp. and AM Corp. Boards did approve the QT. There was no loan agreement, the loan was unsecured, did not bear interest, and had no specified terms of repayment. The DC Corp. Board became aware of the loan when the draft financial statements for fiscal 2006 were circulated.

17. Mr. Xing violated a number of TSX policies, including:

- Using a greater than permitted percentage of the proceeds from the sale of securities for purposes other than those relating to the identification and evaluation of assets or businesses and the obtaining of shareholder approval for a proposed QT;
- Advancing a loan to a Target without issuing a press release;
- Carrying on business other than the identification and evaluation of assets or businesses with a view to a potential QT;
- Failing to have cheques issued by an Issuer signed by two authorized persons; and
- Causing a CPC to make a payment to a related party.

DECISION

18. After considering the evidence and deliberating, the panel made the following decision:

THAT, having heard the plea of guilty to charge Nos. 1, 2, 3, 4, 5 and 6, charge Nos. 3, 4, and 6 having been amended at the hearing, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Yunshen Xing guilty of charge Nos. 1, 2, 3, 4, 5 and 6.

SANCTION

19. Mr. Xing testified at the sanction phase of the proceedings. He apologized for his conduct, and explained that he had become involved in a matter far more complex than he had believed it to be. A number of other investors were relying on him, and he allowed that to influence his judgment. He made a terrible mistake that damaged his profession.

20. Ms. Hersak, on behalf of the Professional Conduct Committee, characterized Mr. Xing's conduct as extremely serious and egregious. She submitted that a sanction of: a written

reprimand; a fine of \$20,000; expulsion; and full publicity would be appropriate. She also sought a portion of the costs of the investigation and hearing, in the amount of \$11,500 and filed a Costs Outline (Exhibit 6).

21. Ms. Hersak submitted that Mr. Xing's conduct demonstrated a complete absence of integrity. He prepared financial statements that were fundamentally misleading, and filed them in the public domain. He filed false certificates. Further, he breached all the rules regarding lending. He utilized his position as the sole signing authority to convert funds to his own use, a use not intended by the investors or permitted by the rules, and put the investors at risk.

22. In mitigation, Ms. Hersak noted Mr. Xing's remorse, and the fact he was inexperienced with capital pools and public companies, although she pointed out that such inexperience should have led to greater caution, as well as the securities environment in 2006 in which this occurred. In aggravation, she noted that Mr. Xing, while in a position of trust, devised and carried out a scheme to ensure a QT went through, without regard for TSE rules, integrity or the risk to other investors.

23. Ms. Hersak submitted that general deterrence had to be the paramount consideration in sanctioning. The message to the public and other members of the profession that complete honesty cannot be sacrificed to company loyalty, regardless of the justification, had to be given. She noted that Mr. Xing's conduct had tarnished the reputation of every member of the profession, and had risked the public trust.

24. Mr. Wardle, on behalf of Mr. Xing, took issue only with the sanction of an expulsion, submitting that, instead, a suspension of 12 to 18 months would be appropriate. He also submitted that the quantum of the fine should be less than that sought by the Professional Conduct Committee. Mr. Wardle noted a number of mitigating factors: the conduct arose from a single set of events and was therefore a single misjudgment; the conduct was not planned over a period of time; financial gain was not the motivation; the loans were disclosed; there was no loss or damage to the public or the other shareholders; and Mr. Xing had shown true and deep remorse for his actions.

ORDER

25. After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Xing be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Xing be and he is hereby fined the sum of \$20,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Xing be suspended from the rights and privileges of membership in the Institute for a period of eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Xing's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to all members of the Institute; and

(b) to all provincial institutes/Ordre, and shall be made available to the public.

5. THAT notice of the suspension, disclosing Mr. Xing's name, be given by publication on the Institute's website and in a newspaper distributed in the geographic area of the member's current employment. All costs associated with the publication shall be borne by the member and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Xing surrender his certificate of membership in the Institute to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held during the period of suspension and thereafter returned to Mr. Xing.
7. THAT in the event Mr. Xing fails to comply with the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above. All costs associated with the publication shall be borne by the member and shall be in addition to any other costs ordered by the committee.

AND IT IS FURTHER ORDERED:

8. THAT Mr. Xing be and he is hereby charged costs fixed at \$11,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

REASONS FOR THE ORDER

26. Mr. Xing's conduct is very serious and strikes at the core integrity of the profession. It is essential that he and every other member understand and be guided to avoid such transgressions. The quantum of the fine must be sufficient to act as a true deterrent and not merely the cost of doing business. Given the monies involved in the transactions, and Mr. Xing's involvement, a fine of \$20,000 is appropriate. Likewise, publicity is required to ensure the public and the membership are aware of the conduct and the Institute's denunciation of it.

27. A majority of the panel decided that a lengthy suspension of Mr. Xing's membership was sufficient to address the principles of sanctioning. The majority noted the following circumstances:

- Mr. Xing made restitution to the companies immediately;
- There was no loss to the shareholders;
- Mr. Xing has expressed remorse;
- At the time the loans were made, Mr. Xing believed they were made with the intent of furthering the objectives of the corporations and for the benefit of the shareholders;
- Mr. Xing changed the disclosures in the statements before he was caught; and
- Mr. Xing has changed the focus of his practice away from public companies, which indicates both an appreciation of his shortcomings and remorse.

28. The majority was of the view that Mr. Xing had already taken steps to rehabilitate himself and that such rehabilitation should be supported. The majority agreed that the primary principle of sanctioning in a matter involving such a serious breach of integrity was general deterrence, but was of the view that such general deterrence was achieved by a lengthy suspension coupled with the other terms of the order.

29. A minority of the panel dissented from the position of the majority, on the issue of the suspension only. The minority would have expelled the member. The minority was of the view that the series of actions and independent transgressions committed by Mr. Xing demonstrated a consistent pattern of his disregard for rules imposed by a number of governing bodies – the Institute, the TSX, Chinese authorities, as well as principles of corporate governance. He showed a propensity for conducting himself so as to achieve a desired result, to the exclusion of all other considerations.

30. The minority held that Mr. Xing's actions indicated his moral centre would not hold, and he would fail, as he had failed, to distinguish right from wrong, particularly in circumstances where doing the wrong thing would result in a benefit or an easier path. His conduct constituted moral turpitude and was indicative of a belief that the end justified the means. Regardless of the likelihood of his rehabilitation, the conduct struck at the very foundation of the profession, at its integrity, and was of such a serious nature and scope that expulsion is required.

DATED AT TORONTO THIS 28TH DAY OF SEPTEMBER, 2009
BY ORDER OF THE DISCIPLINE COMMITTEE

R.J. ADAMOWSKI, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

A.R. DAVIDSON, CA
P. MCBURNEY (PUBLIC REPRESENTATIVE)
D.O. STIER, CA
R.A. VICKERS, FCA