SPP Guiding Case No. 221: Case of Jiang Moumou for Insider Trading

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Decided at the 36th meeting of the 14th Procuratorial Committee of the Supreme People's Procuratorate on September 13, 2024; issued on January 3, 2025.

Keywords

Inside information / sensitive period of inside information / scope of informed persons / illegal gains

Holding

To determine inside information, a substantive judgment shall be made from two aspects, namely whether it has "a major influence on the market price of the securities" and whether it is "not yet public," in accordance with Article 52(1) of the Securities Law. For information other than the major events listed in the Securities Law, if it satisfies the requirements of the preceding provision, it shall be determined as inside information in accordance with the law. In determining the persons with knowledge of inside information, while reviewing whether the actor has a specific official status, the focus shall be on reviewing the circumstances of his or her actual acquisition of the inside information. Whoever obtains inside information through lawful means shall be determined as a person with knowledge of inside information in accordance with the law. The amount of losses avoided by selling in advance using inside information shall be determined as illegal gains, generally calculated on the basis of the closing price on the day the limit-down board is opened after the information is made public; where there is no limit-down, the closing price on the first trading day after resumption of trading shall be the standard for calculation.

Basic Facts

The defendant Jiang Moumou was an employee of Zhejiang Yi Capital Management Co., Ltd. ("Company Yi"), a subsidiary of Jia Holding Group Co., Ltd. ("Company Jia").

Company Jia was the controlling shareholder of the listed company Zhejiang Bing Environment Co., Ltd. ("Company Bing"). In April 2018, in order to repay RMB 2.2 billion of bonds maturing soon, Company Jia planned to issue two tranches of super short-term financing bonds of RMB 1.2 billion and RMB 1 billion respectively in the interbank bond market. At 11:00 on April 24 of the same year, the first tranche failed, and Company Jia subsequently issued an announcement cancelling the issuance, thereby triggering a debt crisis at Company Jia. That evening, Yao Moumou, the legal representative and chairman of Company Jia, convened a meeting of the group's management personnel to study countermeasures, and Jiang Moumou attended the meeting upon notice from Yao Moumou. The meeting required the participants to keep the above information confidential.

On April 25, 2018, Jiang Moumou sold off all 1.25 million shares of Company Bing that he held, with a transaction amount of more than RMB 8.15 million. After the case arose, the Shenzhen Stock Exchange calculated that he had thereby avoided losses of more than RMB 3.36 million.

On May 2, 2018, Company Bing issued an announcement stating that its controlling shareholder Company Jia had a material uncertain matter, that the matter had a major influence on Company Bing, and that trading in the shares would be suspended from that day. On May 4, Company Bing issued an announcement stating that if Company Jia could not properly resolve its debt repayment issue, there was a possibility of a change in the control of Company Bing. After resumption of trading, Company Bing hit the limit-down board for four consecutive trading days, and the limit-down board was opened on the fifth trading day, with a decline of

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8.59% on that day and an overall decline of 48.59%.

On June 15, 2020, the Xiamen Regulatory Bureau of the China Securities Regulatory Commission rendered an administrative penalty decision, determining that the debt crisis matter of Company Jia was inside information, that Jiang Moumou was a person with knowledge of inside information, and that the sensitive period of inside information was from 11:00 on April 24, 2018 to May 3, 2018, and imposed on Jiang Moumou the confiscation of illegal gains of more than RMB 3.36 million and a fine. Jiang Moumou returned the illegal gains and paid the fine.

On June 28, 2021, Jiang Moumou voluntarily surrendered to the public security organ and confessed the criminal facts of his suspected insider trading.

Procuratorate Performance of Duties

(1) Review for prosecution. On November 22, 2021, the Hangzhou Municipal Public Security Bureau of Zhejiang Province transferred Jiang Moumou to the Hangzhou Municipal People's Procuratorate for prosecution on suspicion of the crime of insider trading.

The Hangzhou Municipal People's Procuratorate found upon review that Jiang Moumou, an ordinary employee of Company Yi, a subsidiary of Company Jia, had not undertaken the work of raising the RMB 2.2 billion of super short-term financing bonds, yet had attended the Company Jia executives' meeting and thereby learned of the inside information, so his status as a person with knowledge of inside information was doubtful; and that this was a loss-avoidance type of insider trading, so the method of calculating illegal gains needed further verification. The Hangzhou Municipal People's Procuratorate returned the case to the public security organ for supplementary investigation, requiring further collection of evidence on the reasons for Jiang Moumou's attendance at the meeting and clarification of the calculation method.

After supplementary investigation, the public security organ re-transferred the case for prosecution. The procuratorial organ held upon review: first, although Jiang Moumou was not an executive of Company Jia and Company Yi was not responsible for the group's fund-raising matters, he was related to Yao Moumou and deeply trusted by him, and was assigned by him to handle the group's separate borrowing of RMB 500 million from others; because the group's debt crisis needed to be handled as a whole, he attended the meeting upon notice from Yao Moumou, and was therefore a "person with knowledge of inside information" as provided in Article 180 of the Criminal Law. Second, the trading data and calculation formula retrieved by the public security organ from the Shenzhen Stock Exchange showed that using the day on which the market absorbed the inside information, namely the day the limit-down board was opened, as the benchmark date to calculate the amount of losses avoided was reasonable, and such amount should be determined as illegal gains in accordance with the law. On July 2, 2022, the Hangzhou Municipal People's Procuratorate initiated public prosecution before the Hangzhou Intermediate People's Court against defendant Jiang Moumou for the crime of insider trading.

(2) Charging and proving the crime. On November 17, 2022, the Hangzhou Intermediate People's Court held a public hearing in this case. During the trial, the public prosecutor focused on presenting evidence on the formation and nature of the inside information, Jiang Moumou's status as a person with knowledge of inside information, and his act of trading using the inside information.

Defendant Jiang Moumou raised no objection to the charged facts and charges, and argued that he had voluntarily surrendered, and that during the review for prosecution stage he had fully returned the illegal gains and paid all fines, requesting a mitigated punishment. Jiang Moumou's defense counsel argued that Company Jia's debt crisis did not constitute inside information, for the following reasons: first, the 2019 Securities Law deleted the catch-all provision in the 2014 Securities Law concerning the determination of inside information by securities and futures regulatory institutions based on their authority, and the debt crisis matter in this case did not fall within any of the circumstances enumerated in the 2019 Securities Law, so under the principle of applying the old law if it is more lenient, it could not be determined as inside

information. Second, Company Jia's debt crisis was information about the holding company of the listed company, rather than information about the listed company's own operations or finances. Third, Company Jia had already publicly disclosed the cancellation of the issuance of the super short-term financing bonds on the Shanghai Clearing House and China Money websites on the day the fundraising failed.

The public prosecutor responded: first, both the 2014 Securities Law and the 2019 Securities Law clearly define the meaning of inside information, including the two substantive characteristics of having "a major influence on the market price of the securities" and being "not yet public," and do not provide that inside information is limited to the circumstances expressly enumerated in the Securities Law. The 2019 Securities Law did not delete the catch-all provision, but changed the "other matters" "determined" by securities and futures regulatory institutions to "other matters" "prescribed" by them, which does not mean a narrowing of the scope of inside information, nor does it affect the determination in accordance with the law of circumstances not enumerated in the provisions based on the definition of inside information. Second, in this case, based on the provisions of the Securities Law on the substantive characteristics of inside information, it could be determined that Company Jia's debt crisis was inside information: first, it was material. Although Company Jia's debt crisis was not the operating or financial information of a listed company enumerated in the Securities Law, it could cause Company Jia to lose control over Company Bing and had a major influence on the trading price of Company Bing's shares; second, it was non-public. Company Jia only announced on the Shanghai Clearing House and China Money websites that the issuance of the super short-term financing bonds had been cancelled due to large market fluctuations, and did not disclose the existence of Company Jia's debt crisis and the possibility of losing control over Company Bing, and the above websites did not conform to the provisions of the Securities Law on information disclosure platforms, so it could not be deemed that the inside information in this case had already been made public.

(3) Outcome. On December 29, 2022, the Hangzhou Intermediate People's Court rendered a first-instance judgment, determining that defendant Jiang Moumou had committed the crime of insider trading with especially serious circumstances, but because he had the circumstance of voluntary surrender, and in light of his full return of illegal gains and full payment of administrative fines, he was given a mitigated punishment in accordance with the law and sentenced to three years of fixed-term imprisonment with five years of probation and a fine of RMB 8 million. Defendant Jiang Moumou did not appeal, and the judgment became effective.

Guiding Significance

(1) To determine "inside information," a substantive judgment shall be made from the two aspects of having "a major influence on the market price of the securities" and being "not yet public," in accordance with Article 52(1) of the Securities Law. Upon review, for information other than the major events listed in Article 80(2) and Article 81(2) of the Securities Law, if it possesses both of the characteristics prescribed in Article 52(1) of the Securities Law of having "a major influence on the market price of the securities" and being "not yet public," it shall be determined as inside information in accordance with the law. As to "whether it has a major influence on the market price of the securities," judgment may be made from aspects such as whether it affects the control, operation, and continuance of the listed company, and whether the company has performed the inside information management procedures, to determine whether the information may exert a fundamental and key influence on investors' trading decisions. As to "whether the information has been made public," judgment is generally made from aspects such as whether the content disclosed is complete and accurate, and whether it is published on the websites of securities trading venues and media satisfying the conditions prescribed by securities and futures regulatory institutions.

(2) A person who does not belong to the persons expressly enumerated in Article 51 of the Securities Law but who lawfully obtains inside information shall be determined as an informed person in accordance with the law. In determining "persons with knowledge of inside information," it is necessary not only to review whether the actor's status conforms to the Securities Law and relevant provisions, but also to focus on reviewing the

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circumstances of his or her acquisition of inside information from aspects such as the position he or she holds, the duties he or she undertakes, his or her actual performance of duties, the degree of participation, and the source of information. For an actor who obtains inside information through lawful means such as official position, work, supervision, or business relationships, even if he or she does not belong to the specific range of persons enumerated in the Securities Law, he or she shall be determined as a “person with knowledge of inside information” in accordance with the law.

(3) The calculation of illegal gains in loss-avoidance type insider trading shall generally be based on the closing price on the day the limit-down board is opened. Where inside information that may cause a decline in the stock price is used to sell in advance, the illegal gains refer to the amount of losses avoided. Since the disclosure of such information usually causes the stock price to hit the limit-down board, when the stock price no longer hits the limit-down board, the market can be deemed to have absorbed the information. Therefore, the calculation of illegal gains shall generally be based on the closing price on the day the limit-down board is opened after the information is made public; where there is no limit-down, the closing price on the first trading day after the information is made public shall be the standard.

Relevant Legal Provisions

Article 180 of the Criminal Law of the People’s Republic of China.

Articles 67, 74, and 75 of the Securities Law of the People’s Republic of China (2014 Amendment) (currently Articles 51, 52, 80, and 81 of the Securities Law of the People’s Republic of China apply).

Articles 1, 5, 7, and 10 of the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases of Insider Trading and Leaking Inside Information (Fa Shi [2012] No. 6).

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