

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9933 / September 30, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 76030 / September 30, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16852

In the Matter of

**FOCUS MEDIA HOLDING
LIMITED and JASON JIANG,**

Respondents.

**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 Focus Media Holding Limited (“Focus Media”) and Jason Jiang (“Jiang”, and collectively with Focus Media, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 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 Cease and Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

Summary

1. These proceedings concern Focus Media's and its founder and Chief Executive Officer Jiang's negligent failure to disclose accurate information concerning Focus Media's partial sale of securities in its wholly-owned subsidiary Allyes Online Media Holdings Ltd. ("Allyes") to certain Allyes and Focus Media insiders at a favorable price, months before both the insiders and Focus Media sold their interests in Allyes to a private equity firm at nearly six times the price the Allyes and Focus Media insiders had paid.

Respondents

2. Focus Media is a Cayman Islands corporation headquartered in Hong Kong, with substantially all of its business operations located in mainland China. During the relevant time period, Focus Media's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its American Depository Shares traded on the Nasdaq Global Market. Subsequently, on June 3, 2013, Focus Media Filed a Form 15 that provided notice of termination of its registration with the Commission.

3. Jason Jiang, a citizen of Singapore, is the founder of Focus Media, has been the Chairman of the board of directors of Focus Media since its founding, and, during the relevant time period, was CEO of Focus Media.

Background

4. Focus Media is a China-based advertising company that concentrates in what is often called Out-of-Home advertising. Such advertising includes traditional and digital displays in public places, such as building lobbies, elevators, stores, and outdoor locations. At the end of 2009, Focus Media had operations that included an LCD display network and poster frame network for selling ads in commercial and residential buildings; an "In-store" network for selling ads in retail spaces; selling advertising time on movie screens; outdoor billboards; and an internet advertising network. Focus Media conducted its internet advertising business through its wholly-owned Allyes subsidiary. In 2009, the Allyes internet advertising business accounted for 21.4% of Focus Media's total revenues.

5. On March 22, 2010, Focus Media publicly reported annual and fourth-quarter 2009 earnings through a Form 6-K filing. The filing also disclosed that during the first

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

quarter of 2010 Focus Media sold a part of its Allyes business in what was described as a “Management Buy-Out” (“MBO”): “Certain Allyes employees and management and directors and certain members of the Company’s management and directors recently entered into a definitive agreement with the Company and Allyes in January 2010 to buy-out an aggregate 38% interest in Allyes from the Company.” Jiang was the largest individual purchaser in the MBO. The MBO purchase price, as also disclosed in the Form 6-K, was \$13.3 million, which represented an implied valuation for the entire Allyes entity of approximately \$35 million. The stated reason for the MBO was that it was “part of initiatives being taken by the Company to incentivize management to enhance the future business model of Allyes and thereby to seek long-term sustainable growth for the Company and investors.” Focus Media also stated that the purchase price was based upon, *inter alia*, an independent third-party valuation report.

6. On July 16, 2010, Focus Media filed an amended annual report for 2009 on a Form 20-F. The Form 20-F/A repeated the description of the MBO, and stated that the price paid in the MBO approximated fair value. In addition, the Form 20-F/A reiterated that the MBO was part of initiatives undertaken to incentivize management to enhance the future business model of Allyes and thereby increase shareholder value. Respondent Jiang signed the Form 20-F/A as Chairman and CEO of Focus Media.

7. Two weeks later, on July 30, 2010, Focus Media publicly announced that, a private equity firm (“Acquiror”), had agreed to acquire a controlling stake in Allyes from Focus Media and the other shareholders. The disclosed \$124 million purchase price for Focus Media’s remaining 62% interest in Allyes represented an implied valuation of \$200 million for the entire Allyes entity.

8. As indicated by the following sequence of events, Focus Media’s public disclosures inaccurately described the circumstances concerning the MBO and the Acquiror transactions.

9. In the fall of 2009, Focus Media and Allyes management were considering various structures for a restricted share plan, in order to incentivize Allyes management to continue working at Allyes (particularly in light of significant departures of senior Allyes personnel that had occurred in the preceding year) and assist in a turnaround of the business. It was contemplated that participants in such a plan could thereafter participate in any ultimate disposition (*i.e.*, sale or IPO) of Allyes. In a Power Point presentation received by Jiang and others on September 22, 2009, three restricted share issuance proposals were outlined, with a higher ultimate sales or IPO price for Allyes resulting in a higher incentive percentage of restricted share issuances: 6.7% for a disposition at \$150 million, 8.4% for a disposition at \$200 million, and 10% for a disposition at \$250 million.

10. On October 15, 2009, Jiang and others received an email from an Allyes officer summarizing a proposed allocation, which the Allyes officer described as having been authorized by the Focus Media board, for an issuance of approximately 8.1 million restricted Allyes shares (equaling 7.5% of the outstanding post-issuance share balance), the majority of

which would be allocated to Allyes management and employees. Less than 10% of the newly issued shares were identified as being allocated to Focus Media management and employees, with the largest identified Focus Media recipient (Jiang) to hold 0.5% of Allyes. Unlike with what ultimately happened in the MBO, in this earlier proposal, restricted share recipients were to pay nothing for their shares. Focus Media records reflect that a majority of the Board's Compensation Committee members approved the share allocation plan shortly thereafter.

11. In October and November 2009, documents were circulated among Focus Media and Allyes personnel, including in some instances Jiang, describing a plan for an "A-Share IPO," referring to a public offering on the Shanghai Stock Exchange, to be launched potentially in 2011, pursuant to which plan management would hold 20% of the listed entity at the time of the eventual IPO.

12. Towards the end of November 2009, an Acquiror representative reached out to Allyes to discuss a possible acquisition of the company. A meeting was scheduled between senior representatives of Acquiror and Allyes for November 30, 2009. By December 1, 2009, Allyes and Acquiror executed a non-disclosure agreement concerning a potential transaction, and Allyes provided confidential financial information to Acquiror in connection with the potential transaction.

13. On December 4, 2009, Allyes management circulated to Jiang and others a draft presentation for the Focus Media board concerning the potential Allyes IPO. Unlike prior versions of draft IPO presentations, this version provided for management to abandon the 7.5% restricted equity plan previously approved by a majority of Focus Media's Compensation Committee. Instead, the presentation proposed that management purchase a 19% stake of Allyes based on a \$35 million enterprise valuation. The presentation was circulated to the Focus Media board in advance of its December 6, 2009 board meeting.

14. On December 6, 2009, the Focus Media board met. There are two apparently "final," contradictory versions of the minutes. Neither set of minutes reflects any discussion of an IPO transaction for Allyes. Instead, one version of the board's minutes reflects that the management of Allyes and Focus Media "proposed that they intend to purchase up to 38% equity of Allyes," and that the "buy-out proposal" was approved, with Allyes and Focus Media management and employees authorized to purchase no more than 38% of Allyes at a valuation of no less than "Allyes current valuation USD 35 million." This set of board minutes, for a meeting days after Allyes and Acquiror entered into a non-disclosure agreement, is the first Focus Media document to refer to an MBO with a buyout of 38% of Allyes. Another version of the board's minutes from the same meeting does not mention the MBO at all.

15. On December 6, 2009, the same day as the Focus Media board meeting in which the MBO was apparently approved at an implied valuation of \$35 million, internal Acquiror documents reflect Acquiror's understanding that Allyes management "has guided towards a valuation between \$200M and \$300M."

16. Later in December, Acquiror and Allyes conducted discussions concerning a possible acquisition of Allyes, which included a discussion of a potential acquisition price range of \$150-200 million. Further deal discussions between the parties did not occur at that time and Acquiror business records reflect that this was at Allyes's request, because Allyes asked Acquiror to "hold off the deal" for the MBO to be finalized.

17. In contrast to what his participation in the Allyes restricted share plan would have been, initial Focus Media drafts for the MBO agreement reflect that approximately half of the 38% participation was to go to Jiang.

18. After various drafts of the MBO agreement circulated internally at Focus Media in January and February 2010, the Focus Media board met on March 15, 2010, and ratified the MBO. Although Focus Media's contemporaneous emails refer to the board's ratification of the MBO at the March 15, 2010 board meeting, the board minutes for that meeting do not themselves reflect any mention of the MBO.

19. On March 18, 2010, three days after the Focus Media board meeting in which the MBO was purportedly ratified, a senior officer of Focus Media called outside counsel to discuss possible representation of Focus Media in a sale of Allyes to Acquiror. That same day, Acquiror business records reflect that Allyes and Acquiror management had spoken again. Later that month, Acquiror records reflect its understanding that "[d]eal looks something like 200M equity, 160-ish E[nterprise] V[alue]," and that they had been informed of a desire to close in July "for understandable reasons."

20. Less than four months later on July 30, 2010, Focus Media publicly announced that Acquiror had agreed to acquire a controlling stake in Allyes from Focus Media and the other shareholders. The disclosed \$124 million purchase price for Focus Media's remaining 62% interest in Allyes represented an enterprise valuation of \$200 million for Allyes.

21. Although Focus Media and Jiang maintain that they had no knowledge that there had been any discussions between Allyes management and Acquiror regarding the sale of Allyes for \$200 million before the MBO was approved, they ignored numerous red flags that should have alerted them to this situation.

Red Flags

The MBO Participants

22. Focus Media stated in its public filings that the purpose of the MBO was to incentivize Allyes management to assist in a turnaround of the business. However, as a result of the sale to Acquiror following the MBO, the largest beneficiary of the MBO was Jiang by virtue of his percentage share.

23. Although Focus Media and Jiang attributed the size of Focus Media

management's participation in the MBO (greater than 40%) to Allyes management's insistence that Focus Media management share the risk of the incentivization program, the fact that a program intended to incentivize Allyes management resulted in such substantial short-term gains to the Focus Media CEO warranted deeper scrutiny into whether a potential deal may have been available to Allyes at the time the structure of the MBO was first under consideration. The need for such scrutiny was heightened with respect to subsequent public filings because a Focus Media director became aware that Jiang had approved payment of a \$2.6 million finder's fee to an Allyes officer for bringing the Acquiror deal to Focus Media. Jiang approved the fee without full disclosure to the Focus Media Board.

24. Similarly, although the stated purpose of the MBO was to incentivize Allyes management, two of the MBO participants were British Virgin Island-incorporated entities purportedly owned by individuals who had been retained by Allyes as consultants—not employees—in November 2009 shortly before the MBO. There is no indication in Focus Media's records that these consultants actually performed work on behalf of Allyes, and Focus Media's records do not reflect any inquiry by any member of the Focus Media board, including Jiang, concerning the basis for providing those individuals with the opportunity to purchase MBO shares. Moreover, Jiang, having been asked by an Allyes representative to lend a BVI entity money so that it would be able to purchase the shares, funded the participation of one of the BVI entities. Jiang's loan was subsequently repaid in cash, by that Allyes representative after the Acquiror transaction closed.

The Price Difference Between the MBO and the Acquiror Transaction

25. Although Focus Media received an appraisal supporting the \$35 million MBO valuation, contemporaneous internal discussions regarding an ultimate sale or IPO of Allyes in the range of \$150 to \$250 million should have led Focus Media and Jiang to question the company's reliance on that valuation only months before Allyes was indeed sold to Acquiror for \$200 million.

The Failure to Notice and Act on Evidence of Prior Communications with Acquiror

26. After the Focus Media officer became aware in March 2010 that negotiations were occurring with Acquiror, there is no indication that Focus Media took any steps to determine when those discussions had first started, and what the content of those discussions had been. In addition, in July 2010, another Focus Media officer failed to notice a reference to the pre-MBO December 1, 2009 non-disclosure agreement between Allyes and Acquiror in a deal-related document being circulated by email.

The Lack of Appropriate Corporate Formalities

27. Focus Media's records do not indicate at what date the company bound itself to the MBO, and the agreement was still being circulated for signature to certain purchasers up until July 28, 2010. One of the participants did not fund the MBO until late June 2010, one week after Acquiror executed a Term Sheet, purportedly because nobody had asked for the

money. And a number of Focus Media employees who ended up receiving proceeds arising from the sale to Acquiror of interests purchased in the MBO, were not parties to the MBO agreement.

28. The lack of formality in executing and funding the MBO, together with the undocumented receipt of proceeds by Focus Media employees, should have subjected the MBO and the ultimate sale to Acquiror to greater scrutiny into whether there was any connection between the two events.

29. Moreover, and as explained above, Focus Media's board minutes concerning the sale of the Allyes asset in the MBO are both inconsistent and incomplete. With respect to the Focus Media board meeting of December 6, 2009, the company's records contain two purportedly "final" versions of board minutes, one mentioning board approval of the MBO and one not mentioning the MBO at all. With respect to the Focus Media board meeting of March 15, 2010, the company's board minutes do not mention the MBO at all, even though other records reflect that the board voted on and approved the transaction during that meeting. With respect to a Focus Media board meeting of July 10, 2010, at which the potential sale to Acquiror was purportedly discussed, the company's records do not contain any board minutes from that meeting.

30. Certain of Focus Media's SEC filings, including filings signed by Jiang, concerning the MBO and the sale of Allyes to Acquiror were materially misleading in that they contained unqualified statements that the MBO was undertaken at a price approximating fair value and in order to incentivize management to seek long-term sustainable growth. At the time, however, Focus Media and Jiang could have accessed information indicating the inaccuracy of those statements. Had they inquired further into the circumstances surrounding the MBO based on the red flags described above, they would have uncovered the following information: (i) that the MBO was finalized after Acquiror and Allyes had engaged in discussions concerning a sale of Allyes in December at a \$200 million price that was multiples of the MBO price; and (ii) that consultants and other non-disclosed parties took part in the MBO. Focus Media's material misrepresentations and omissions were repeated in numerous company filings, including filings related to the secondary offering of ADRs into the market on September 7, 2010.

31. Jiang's and Focus Media's failure to exercise an appropriate level of care in scrutinizing the MBO resulted in the Focus Media Board receiving materially inaccurate information regarding the MBO.

Violations

32. As a result of the conduct described above, Focus Media and Jiang violated Section 17(a)(2) of the Securities Act, which prohibits obtaining money or property by means of any untrue statement of a material fact or any omission 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.²

33. As a result of the conduct described above, Focus Media violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents Focus Media and Jiang cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) of the Securities Act. Pursuant to Section 21C of the Exchange Act, Respondent Focus Media cease and desist from committing or causing any violations and any future violations of Section 13(b)(2)(A) of the Exchange Act.

B. Respondent Focus Media shall within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$34,600,000 to the Securities and Exchange Commission. 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 Focus Media may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent Focus Media 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 Focus Media 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

² A violation of Section 17(a)(2) may be established by a showing of negligent conduct. *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

Payments by check or money order must be accompanied by a cover letter identifying Focus Media 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 Andrew M. Calamari, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, New York, New York 10128.

C. Respondent Jiang shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$9,690,000; disgorgement of \$9,690,000; and prejudgment interest on the amount to be disgorged of \$1,647,865.43 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717 and Commission Rule of Practice, Rule 600. Payment must be made in one of the following ways: Payment must be made in one of the following ways:

- (1) Respondent Jiang may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent Jiang 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 Jiang 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 Jiang 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 Andrew M. Calamari, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, New York, New York 10128.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest and/or penalties referenced in paragraphs B and C above. Regardless of whether any such Fair Fund distribution is made, 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 agrees that in any Related Investor Action, they shall not argue that Respondents 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 agrees 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 with respect to Respondent Jiang, the findings in this Order are true and admitted by Respondent Jiang, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Jiang 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 Jiang 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