

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74498 / March 13, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16436

In the Matter of

**BERJAYA LOTTERY
MANAGEMENT (H.K.)
LTD.**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER AND CIVIL
PENALTY**

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 Berjaya Lottery Management (H.K.) Ltd. (“Berjaya” 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 it and the subject matter of these proceedings, which are admitted, 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 a Cease-and-Desist Order and Civil Penalty (“Order”), as set forth below.

III.

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

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 13(d) of the Exchange Act, and the rules promulgated thereunder, require the filing of a Schedule 13D, commonly referred to as a "beneficial ownership report," when a person or group of persons acting together for the purpose of acquiring, holding, or disposing of securities, acquires, directly or indirectly, beneficial ownership of more than 5% of a voting class of a company's equity securities. Timely disclosure of beneficial ownership, and intentions regarding the equity securities held, substantially contribute to the pool of material information available to inform investment and voting decisions. Section 13(d)(2) and Rule 13d-2(a) thereunder also require the filing of amendments to Schedule 13D whenever there is a material change in the facts contained in the Schedule 13D.

2. Berjaya Lottery Management (H.K.) Limited ("Berjaya") is a Hong Kong corporation holding investments in subsidiaries involved in the manufacture and distribution of computerized lottery and voting systems and the leasing of on-line lottery equipment and provision of ancillary software support. Berjaya violated its beneficial ownership disclosure requirements under the Exchange Act in connection with actions it took to have International Lottery & Totalizator Systems, Inc. ("ILTS"), a publicly-held company that is based in California, enter into a going-private transaction.

3. Between July 7 and July 10, 2013, Berjaya took significant steps to further a going-private transaction and discussed in an email its intention to privatize ILTS. Berjaya, already a majority holder of ILTS securities, had an obligation to promptly amend its Item 4 disclosure to report this material change. Berjaya, however, filed an amendment to its Schedule 13D concerning the transaction in March 2014.

Respondent

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.

4. Berjaya's principal place of business is in Kuala Lumpur, Malaysia. Berjaya is a private company and does not have shares registered with the Commission. Since approximately September 1999, Berjaya owned at least 71.3% of the ILTS shares outstanding and was a controlling shareholder of ILTS. On January 31, 2014, ILTS filed a Schedule 13E-3 in connection with a going-private transaction, announcing a reincorporation merger and reverse stock split to take ILTS private and eliminate all public shareholders of the company. The filing was subsequently amended on March 25, 2014 to also identify Berjaya as a filing person. On December 30, 2014, the going-private transaction was completed.

Legal Framework

5. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) thereunder together require any person or group who has acquired, directly or indirectly, beneficial ownership of more than five percent of a class of a registered equity security to file a statement with the Commission disclosing the identity of its members and the purpose of its acquisition. *See generally GAF Corp. v. Milstein*, 453 F.2d 709, 717 (2d Cir. 1971), *cert. denied*, 406 U.S. 910 (1972). Entities or individuals comply with Section 13(d) of the Exchange Act by filing a Schedule 13D with the Commission no later than ten business days after they accumulate beneficial ownership of more than five percent of the class of equity security.

6. Schedule 13D requires disclosure of, among other things: (1) the identity of the acquirer, including beneficial owners;² (2) a description of the purpose(s) of the acquisition, including any plans (i) to affect the issuer's Board of Directors or (ii) to cause an extraordinary corporate transaction, such as a merger, reorganization, or going-private transaction; and (3) the interest of all persons making the filing, including those acting together as a group. A duty to file under Section 13(d) of the Exchange Act and Rule 13d-1 creates the duty to file truthfully and completely. *SEC v. Savoy Indus.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) *cert. denied*, 440 U.S. 913 (1979). Scienter is not required to establish a violation of Section 13(d). *Id.* at 1167; *SEC v. Levy*, 706 F. Supp. 61, 69 (D.D.C. 1989).

7. Exchange Act Rule 13d-101, which sets forth reportable items covered in a Schedule 13D disclosure, requires filers to disclose "the purpose or purposes of the acquisition of securities of the issuer" in the Item 4 disclosure. Exchange Act Rule 13d-101 further provides a list of plans or proposals that a reporting person may have that would trigger an Item 4 reporting obligation, including additional purchases of securities or a going-private transaction by a public company.³ Specifically, the Rule provides that any plan or proposal that relates to the "acquisition

² Whether a person is a "beneficial owner," a term not defined under Section 13(d) of the Exchange Act, is determined through the application of Rule 13d-3, which broadly includes "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. *See* Rule 13d-3(a); *see also SEC v. First City Financial Corp.*, 890 F.2d 1215, 1221 (D.C. Cir. 1989).

by any person of additional securities of the issuer, or the disposition of securities of the issuer [subpart (a)]” or “[a] class of equity securities of the issuer becoming eligible for termination of registration pursuant to Section 12(g)(4) of the [Exchange] Act [subpart (i)]” is a required disclosure under Item 4 of the Schedule 13D. A disclosable matter under Rule 13d-101 includes a reporting person’s plan which would result in an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer. *SEC v. Teo*, 746 F.3d 90, 99 n.10 (3d Cir. 2014).

8. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) together require a filer to promptly amend Schedule 13D when there are material changes or developments in the information previously reported. “Material” is defined as information regarding those matters where there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered. *United States v. Bilzerian*, 926 F.2d 1285, 1298-99 (2d. Cir. 1991) (applying *TSC Industries, Inc., et al. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)); *SEC v. Savoy Indus.*, 587 F.2d at 1165-67; *see also* Exchange Act Section 13(d)(2), 15 U.S.C. § 78m(d)(2); Exchange Act Rule 13d-2, 17 C.F.R. § 240.13d-2; Exchange Act Rule 12b-2, 17 C.F.R. § 240.12b-2; *see also* Exchange Act Rule 12b-1, 17 C.F.R. § 240.12b-1.

9. Qualitative disclosures providing narrative in response to line item requirements of Rule 13d-101 also are subject to material changes. For example, generic disclosure that indicates the beneficial owner is reserving the right to engage in any of the kinds of transactions enumerated in Item 4 (a)-(j) of Exchange Act Rule 13d-101 must be amended when a plan with respect to a disclosable matter has been formulated. *See In the Matter of Tracinda Corp.*, Rel. No. 34-58451, 2008 SEC LEXIS 3036 (Sept. 3, 2008) (settled order). Depending on the facts and circumstances, however, an amendment also may be required before a plan has been formulated because the obligation to revise arises under Section 13(d)(2) and corresponding Rule 13d-2(a) promptly after a “material change occurs in the facts set forth in the” Schedule 13D.

Berjaya’s Failure to Report Material Change to Plans or Proposals for ILTS

10. As a greater than 5% beneficial owner of ILTS common stock, Berjaya was subject to the reporting requirements of Exchange Act Section 13(d).

³ *See* Rule 13d-101 (Item 4). Generally, when an issuer becomes eligible to deregister under Section 12 or suspend periodic reporting under Section 15(d) with respect to a class of its equity securities in a transaction conducted by an affiliate of the issuer, the transaction type is defined as “going-private” under Exchange Act Rule 13e-3(a)(3). *See* Rule 13e-3(a)(3) (defining a “going-private” transaction).

11. Berjaya failed to timely amend its Schedule 13D Item 4 disclosure after Berjaya had undertaken affirmative steps in furtherance of its previously undisclosed plan designed to effectuate a going-private transaction for ILTS—an extraordinary corporate transaction. By July 2013, Berjaya had engaged in serious discussions and took significant steps to further its plan to take ILTS private. Among other things, Berjaya submitted a concept paper to ILTS and informed ILTS that its intention was to privatize the company. Notwithstanding the fact that Berjaya incurred a reporting obligation as early as July 2013, the company failed to amend its Schedule 13D Item 4 disclosure until March 2014. In the intervening period, Berjaya took additional, significant steps to further the going-private transaction, including: (i) deciding on a reincorporation merger followed by a reverse stock split and (ii) approving by written consent in lieu of a shareholder meeting such transactions in order to facilitate taking ILTS private. By waiting eight months to update its disclosure, Berjaya did not amend promptly. As a result, Berjaya violated Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder.

Violations

12. As a result of the conduct described above, Berjaya violated Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder.

Berjaya's Cooperation

13. In determining to accept the Offer, the Commission considered the cooperation Respondent provided to Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent, Berjaya, shall cease and desist from committing or causing any violations and any future violations of Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder;

B. Berjaya shall within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payments 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 Berjaya 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 Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.

Brent J. Fields
Secretary