

Shanghai Higher People's Court

Civil Judgment

(2021) Hu Xing Zhong No. 10

The original public prosecution organ is the No.1 Branch of the People's Procuratorate of Shanghai Municipality.

The appellant (defendant in the original trial), Wang Yue, male, born on May 15, 1983, in Kunshan City, Jiangsu Province, Han nationality, university education, Chairman of Kaiying Network Co., Ltd., registered residence at Room 5A, No. 201, Changbai No.1 Village, Yangpu District, Shanghai, and residing at No. 11, Binshui Mansion, Lane 28, Shanxi North Road, Jing'an District, Shanghai. He was detained for criminal investigation on suspicion of manipulating the securities market on May 1, 2019, and arrested on May 15 of the same month. He is currently detained at the Shanghai No. 2 Detention Center.

Defenders: Chen Youle and Mo Chenping, lawyers from Grandall Law Firm, Shanghai.

The appellant (defendant in the original trial), Sheng Liyuan, male, born on November 12, 1981, in Shanghai, Han nationality, university education, Secretary of the Board of Directors and Chief Financial Officer of Kaiying Network Co., Ltd., residing at Room 1702, No. 1, Lane 111, Xueqian Street, Huangpu District, Shanghai. He was detained for criminal investigation on suspicion of the crime of manipulating the securities market on March 8, 2019, and arrested on April 12 of the same year. He is currently detained at the Shanghai No. 2 Detention Center.

Defender: Fu Lang, lawyer from Huiye Law Firm, Shanghai

The appellant (defendant in the original trial), Chen Fang, male, born on December 23, 1981, in Shaoxing City, Zhejiang Province, Han nationality, senior high school education, is the actual controller of Zhejiang Wuheng Asset Management Co. Ltd. and Hangzhou Aosheng Asset Management Co., Ltd. His registered residence is at No. 72, Dingjiaban, Gujiadang Village, Qianqing Town, Keqiao District, Shaoxing City, Zhejiang Province, and his residence is at Room 1201, No. 5, Lane 50, Meihua Road, Pudong New Area, Shanghai. He was detained for criminal investigation on suspicion of the crime of manipulating the securities market on March 8, 2019, arrested on April 12 of the same year, released on bail pending trial on March 4, 2020, and arrested again on December 8 of the same year. He is currently detained at the Shanghai No. 2 Detention Center.

Defender: Zhang Zhongda, lawyer from Shanghai Erli Law Firm.

Defender: Ding Yanling, lawyer from Shanghai Landy Law Firm.

The Original Trial Defendant, Yuan Xianglong

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Male, born on December 20, 1988, in Shengzhou City, Zhejiang Province, of Han nationality, with a junior college education. He serves as the General Manager of Shengliu Network Technology Co., Ltd. (Shangrao City, Jiangxi Province) and Qingyou Network Technology Co., Ltd. His registered residence is at No. 1, Building 6, Gongnong Wuyuan, Shahu Street, Shengzhou City, Zhejiang Province, and his place of residence is at Room 602, Unit 1, Building 2, No. 76, Fenghuang West Avenue, Xuri Sub-district Office, Shangrao City, Jiangxi Province. On January 31, 2013, he was sentenced to two years of fixed-term imprisonment with a three-year probation and a fine of 70,000 yuan (Renminbi) for committing the crime of infringing on copyrights. On August 8, 2019, he was detained for criminal investigation on suspicion of committing the crime of harboring; on September 2, the same year, he was arrested. On March 4, 2020, and March 4, 2021, he was released on bail pending trial respectively.

The Shanghai No. 1 Intermediate People's Court heard the case where the No. 1 Branch of the People's Procuratorate of Shanghai Municipality accused the original trial defendants Wang Yue, Sheng Liyuan, and Chen Fang of the crime of manipulating the securities market, and the original trial defendant Yuan Xianglong of the crime of harboring, rendered a criminal judgment (No. (2020) Hu 01 Xing Chu 25) on December 18, 2020. The original trial defendants Wang Yue, Sheng Liyuan, and Chen Fang refused to accept the judgment and filed appeals. After this court accepted the case on January 21, 2021, a collegial panel was formed in accordance with the law, and the case was publicly heard on April 19 and June 4, 2021. The People's Procuratorate of Shanghai Municipality appointed Procurator Xu Lei to appear in court to perform his duties. Appellants Wang Yue, Sheng Liyuan, Chen Fang and defenders Chen Youle, Mo Chenping, Fu Lang, Zhang Zhongda, and Ding Yanling attended the proceedings. During the proceedings, the People's Procuratorate of Shanghai Municipality proposed a one-month extension of the trial on the grounds that supplementary investigation was needed in this case. The case has now been concluded.

The original judgment found that:

I. Facts of Manipulating Kaiying Network

Kaiying Network Co., Ltd. (hereinafter referred to as Kaiying Network) is a company listed on the Shenzhen Stock Exchange, with the stock code 002517 and the stock name Kaiying Network. Defendant Wang Yue was the major shareholder, former chairman, and legal representative of Kaiying Network. Defendant Sheng Liyuan was the former secretary of the board of directors and chief financial officer of Kaiying Network.

In October 2015, when approving the major asset restructuring project of Taiya Shoes Co., Ltd., the predecessor of Kaiying Network Co., Ltd., the China Securities Regulatory Commission (CSRC) also approved the company's private placement project to raise funds by issuing new shares not exceeding RMB 3 billion (the same currency shall apply hereinafter) (hereinafter referred to as the private placement project).

In around April 2016, defendant Sheng Liyuan, upon introduction by Ma Niyang,

Sun Hua, and others, introduced China Zheshang Bank Co., Ltd., China Minsheng Bank Co., Ltd., Zhejiang Zhongda Yuantong Financial Leasing Co., Ltd. (hereinafter referred to as Zheshang Bank, Minsheng Bank, and Zhejiang Zhongda Company respectively), and Founder East Asia Trust Co., Ltd. (later renamed Guotong Trust Co., Ltd., hereinafter referred to as Founder Trust) to participate in the private placement project. By November of the same year, after negotiations among the aforementioned parties, China Zheshang Bank and China Minsheng Bank acted as the senior tranches, Zhejiang Zhongda Company and Founder Trust as the mezzanine tranches, and Wang Zheng, at the instruction of Wang Yue, as the junior tranche. They jointly contributed funds to complete the private placement project with a total amount exceeding RMB 1.9 billion. During this period, Wang Yue promised to China Zheshang Bank, China Minsheng Bank, Zhejiang Zhongda Company, and Founder Trust that if the stock price was lower than the private placement issue price upon the expiration of the private placement project, he would be responsible for making up the difference. Subsequently, due to the overall downward trend of Kaiying Network's stock price, Wang Yue instructed Sheng Liyuan to find a solution to the matter, and later adopted the market value management plan proposed by Sheng Liyuan. Around February 2017, Sheng Liyuan got to know the defendant Chen Fang through the introduction of Ma Niying and Yu Junhua, and introduced the basic information of Kaiying Network's private placement project to Chen Fang. In May of the same year, Chen Fang met with Sheng Liyuan alone and stated that he could take over the above business, but proposed that Kaiying Network (the major shareholder) provide funds for interest bundling. Later, with Wang Yue's approval, Sheng Liyuan and Chen Fang agreed that Wang Yue would contribute 300 million yuan in the name of a loan. In addition, Chen Fang and Sheng Liyuan also agreed on matters such as an expected price of 55 yuan per share, a period from June 2017 to the end of 2017, Kaiying Network's cooperation by controlling the content and release rhythm of announcements, and the order of capital contribution. Chen Fang also provided Sheng Liyuan with a mobile phone specifically for communication.

In early June 2017, defendant Chen Fang instructed his assistant Song Lili to draft a loan contract, which he signed and then handed over to defendant Sheng Liyuan. Between June 2017 and February 2018, defendant Wang Yue successively paid a total of 360 million yuan to Chen Fang in the form of loans in four installments. In addition, when Kaiying Network acquired a 51% equity stake in Zhejiang Shenghe Company, Wang Yue required Jin Danliang, the counterparty in the acquisition, to repurchase Kaiying Network's shares using 750 million yuan of the equity transfer proceeds by December 2017. During the same period, defendant Chen Fang obtained leveraged funds through intermediaries such as Shanghai Caize Asset Management Co., Ltd., and also established private securities investment funds including Aosheng Xizi No. 1 and Aosheng Qianjiang No. 3 to secure additional leveraged financing. By this point, Wang Yue and Chen Fang had raised a total of over 2 billion yuan. In addition, Chen Fang also actually controlled 22 trust accounts including the Aosheng Xizi No. 1 Private Securities Investment Fund and 257 personal accounts under the names of Bian Zhongyin, Cai Lijun, Wang Xiaoping and others

(279 accounts in total, hereinafter referred to as the involved account group), which were used for stock trading by Wang Dong and others through position allocation software. Between June 7, 2017, and March 7, 2018, defendants Wang Yue and Sheng Liyuan, taking advantage of their positions as Chairman and Secretary of the Board of Directors of Kaiying Network respectively, concentrated on issuing or delaying the issuance of announcements, issued uncertain and false announcements, and also leaked inside information to defendant Chen Fang. During the same period, defendant Chen Fang instructed Wang Dong and others to use the above-mentioned funds and the involved account group to conduct continuous trading of Kaiying Network in coordination with Kaiying Network's announcements and inside information. The specific circumstances are as follows:

1. Announcement on the Proposed Investment in Five Internet Finance Companies

In late May 2017, after negotiations with Qiao Yanqing (the actual controller of Shanghai Hanxin Information Technology Co., Ltd., Shanghai Handi Data Service Co., Ltd., Shanghai Hanhui Information Technology Co., Ltd., and a minor shareholder of Shanghai Hexun Chelong Asset Management Co., Ltd.) and Ao Xiang (the legal representative of Shanghai Nuanshui Information Technology Co., Ltd.) (hereinafter referred to as Hanxin Information Company, Handi Data Company, Hanhui Information Company, Hexun Asset Management Company, and Nuanshui Information Company respectively), defendant Wang Yue reached an investment intention to invest (increase capital) RMB 34.5 million, RMB 35 million, RMB 20 million, RMB 40 million, and RMB 15 million in the name of Kaiying Network Co., Ltd. in Handi Data Company, Hanhui Information Company, Hanxin Information Company, Hexun Asset Management Company, and Nuanshui Information Company respectively. Subsequently, Wang Yue and defendant Sheng Liyuan, while clearly aware that the above-mentioned 5 proposed investment projects had not met the minimum amount requirement for investment announcements set forth by the Shenzhen Stock Exchange and were merely expressions of investment intent, nonetheless convened the 16th meeting of the 3rd Board of Directors and approved the aforementioned proposed investment projects.

On June 8, 2017, Kaiying Network issued the following announcements: Announcement No. 2017-068: 《Regarding the Proposed Investment by the Wholly-Owned Subsidiary in Shanghai Handi Data Service Co., Ltd.》 Announcement No. 2017-069: 《Regarding the Proposed Investment by the Wholly-Owned Subsidiary in Shanghai Hanhui Information Technology Co., Ltd.》 Announcement No. 2017-070: 《Regarding the Proposed Investment by the Wholly-Owned Subsidiary in Shanghai Hanxin Information Technology Co., Ltd.》 Announcement No. 2017-071: 《Regarding the Proposed Investment by the Wholly-Owned Subsidiary in Shanghai Hexun Chelong Asset Management Co., Ltd.》 Announcement No. 2017-072: 《Regarding the Proposed Investment by the Wholly-Owned Subsidiary in Shanghai Nuanshui Information Technology Co., Ltd.》 On the day of the announcement, the stock price of Kaiying Network rose by 3.15%. During the same period, the online game index rose by 0.11% on a single day,

deviating from the index by 3.04%; the SME Composite Index rose by 0.03% on a single day, deviating from the index by 3.12%. Between July and August of the same year, after further negotiations with Qiao Yanqing, Mao Lixun, and others, defendant Wang Yue reduced the investments in Handi Data Company and Hanhui Information Company to 20 million yuan and 12 million yuan respectively, maintained the investment in Nuanshui Information Company at 15 million yuan (a total of 47 million yuan), and canceled the investments in Hanxin Information Company and Hexun Asset Management Company. However, Kaiying Network did not continuously disclose the above-mentioned changes in investments.

2. Announcement on the Restricted Stock Incentive Plan

In early June 2017, defendants Wang Yue and Sheng Liyuan, while clearly aware that the incentive recipients could not independently raise the huge amount of funds required to purchase the incentive equity, nevertheless instructed Chen Fei, the Securities Affairs Representative of Kaiying Network, to draft the "2017 Restricted Stock Incentive Plan (Draft)" and other documents.

The main content of the Draft Plan stipulated that Kaiying Network would sell a total of 38 million shares (worth over RMB 59.9 billion) to 8 middle-level management personnel (including Lin Bin) at a price of RMB 17.54 per share (a 50% discount). This meant each recipient would need to contribute RMB 74.9835 million. Additionally, the Company committed not to provide any loans or other forms of financial assistance to the recipients. Subsequently, the 17th meeting of the 3rd Board of Directors of Kaiying Network approved the aforementioned Plan.

On June 10, 2017, Kaiying Network Co., Ltd. issued Announcement No. 2017-076 entitled "Announcement of the Resolution of the 17th Meeting of the 3rd Board of Directors". On the first trading day after the announcement: The stock price of Kaiying Network rose by 0.09%. During the same period, the online game index fell by 1.14% (a deviation of +1.23%), and the SME Composite Index fell by 1.11% (a deviation of +1.20%). On the following day: The stock price of Kaiying Network rose by 2.10%. During the same period, the online game index rose by 1.24% (a deviation of +0.86%), and the SME Composite Index rose by 1.29% (a deviation of +0.81%).

Subsequently, Kaiying Network Co., Ltd. successively issued the "List of Incentive Recipients under the 2017 Restricted Stock Incentive Plan" and other documents. On September 28 of the same year, Kaiying Network Co., Ltd. issued Announcement No. 2017-141 entitled "Announcement on Terminating the Implementation of the 2017 Restricted Stock Incentive Plan".

3. Announcement on Investing in the Establishment of Ningbo Kaiying Microfinance Company

Between the end of 2016 and the beginning of 2017, after discussions with Xie Xiaoping, Chairman of Zhongyi Financial Consulting Group Co., Ltd., and Dazhihui Information Technology Co., Ltd. (hereinafter referred to as Zhongyi Financial Company and Dazhihui Company respectively), defendant Wang Yue decided to jointly invest in establishing an internet microfinance company, with Xie Xiaoping responsible for the specific preparation work. On March 16, 2017, Wang Yue, on behalf of Kaiying Network Co., Ltd., Xie Xiaoping, on behalf of Zhongyi Financial

Company, and representatives of Dazhui Company signed the Shareholders' Contribution Agreement for establishing Ningbo Kaiying Internet Microfinance Co., Ltd. (hereinafter referred to as Ningbo Kaiying Microfinance Company) at the Haishu District Government of Ningbo City. In April of the same year, the application materials for Ningbo Kaiying Microfinance Company were submitted to the Ningbo Municipal Financial Office. On June 8 of the same year, the People's Government of Haishu District, Ningbo City issued an Official Reply approving the establishment of Ningbo Kaiying Microfinance Company. The Reply stipulated that the promoters of Ningbo Kaiying Microfinance Company should complete the company's preparation, industrial and commercial registration, and other procedures within 2 months from the date of the Reply's issuance; otherwise, the approval would become invalid. On July 4 of the same year, the board of directors of Ningbo Kaiying Microfinance Company elected Wang Yue as chairman for a term of 3 years.

On June 13, 2017, defendant Sheng Liyuan instructed Chen Fei via WeChat to prepare for the issuance of an announcement regarding the proposed investment in Ningbo Kaiying Microfinance Company. On the 17th of the same month, three months after signing the aforementioned Shareholders' Contribution Agreement, two months after submitting the application materials for approval, and one week after the People's Government of Haishu District, Ningbo City issued the Official Reply, Kaiying Network Co., Ltd. issued Announcement No. 2017-083 entitled "Announcement on the Proposed Investment and Establishment of an Internet Microfinance Company by the Wholly-Owned Subsidiary". On August 4 of the same year, nearly two months after Ningbo Kaiying Microfinance Company had obtained the approval and one month after Wang Yue had been elected as its chairman, Kaiying Network Co., Ltd. issued Announcement No. 2017-112 entitled "Progress Announcement on the Proposed Investment and Establishment of an Internet Microfinance Company by the Wholly-Owned Subsidiary".

4. Announcement on the Acquisition of a 51% Equity Stake in Zhejiang Shenghe Company

Between the beginning of 2017 and July, after discussions with involved person Jin Feng, defendant Wang Yue reached an Equity Transfer Agreement. The Agreement stipulated that Kaiying Network Co., Ltd. would acquire a 51% equity stake in Zhejiang Shenghe Company held by Jin Danliang for a cash consideration of over RMB 1.6 billion. It was further agreed that Jin Danliang would repurchase the equity from Kaiying Network using RMB 750 million of the acquisition funds by December 31, 2017. In early July of the same year, defendant Sheng Liyuan instructed Chen Fei to prepare the relevant board meeting agenda and materials. On a day in the middle of that month, Sheng Liyuan went to Room 1040 of the Mandarin Oriental Hotel where defendant Chen Fang was staying and disclosed the above-mentioned inside information to Chen Fang.

On July 26, 2017, Kaiying Network Co., Ltd. convened the 18th and 19th meetings of the 3rd Board of Directors and adopted the "Proposal on Changing the Investment Projects of Raised Funds". On the 27th of the same month, Kaiying Network Co., Ltd. issued Announcement No. 2017-101 entitled "Announcement on

Changing the Investment Projects of Raised Funds" and Announcement No. 2017-102 entitled "Announcement on External Investment".The next day, the total trading volume of accounts other than the involved account group was 5.96 million shares, compared with 1.46 million shares, 2.01 million shares, and 1.93 million shares in the previous three days respectively.

5. Announcement on Profit Distribution and Capital Surplus Conversion to Share Capital

In early August 2017, after discussions between Defendant Wang Yue and Defendant Sheng Liyuan, it was decided to conduct the 2017 semi-annual profit distribution and capital surplus conversion to share capital for Kaiying Network Co., Ltd. For this purpose, Sheng Liyuan instructed Chen Fei to prepare the relevant board meeting agenda and materials. On a day in the middle of that month, Sheng Liyuan went to Room 1040 of the Mandarin Oriental Hotel where Defendant Chen Fang was staying and disclosed the above-mentioned inside information to Chen Fang.

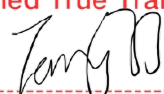
On August 28, 2017, Kaiying Network Co., Ltd. issued Announcement No. 2017-123, "Proposed 2017 Semi-Annual Profit Distribution and Capital Surplus Conversion to Share Capital". On the same day: The stock price of Kaiying Network rose by 7.46%. The online game index rose by 1.3%, with a deviation of 6.16% from the stock price. The SME Composite Index rose by 1.16%, with a deviation of 6.30% from the stock price. The total trading volume of accounts other than the involved account group was 13.09 million shares, compared with 1.65 million shares, 2.59 million shares, and 3.29 million shares in the previous three days respectively.

6. Announcement on the 2017 Performance Forecast

In October 2017, Defendant Sheng Liyuan instructed Li Jinghao, a senior auditor from BDO China Shu Lun Pan Certified Public Accountants (the firm retained by Kaiying Network Co., Ltd.), to adjust the company's original game revenue recognition policy from "T+1" to "T+0", which effectively increased the revenue for one additional month. Subsequently, the auditors conducted the audit in accordance with the above adjustment, resulting in an increase of approximately RMB 60 million (or 8% year-on-year) in Kaiying Network Co., Ltd.'s 2017 profit forecast. Later, Sheng Liyuan instructed Chen Fei to complete the relevant announcement procedures.

On October 30, 2017, Kaiying Network Co., Ltd. issued the "Summary of the 2017 Semi-Annual Report and the 2017 Third Quarter Performance Forecast", which mainly stated that the net profit had increased significantly. The above-mentioned announcement attributed the performance change to the strong performance of multiple new games during the reporting period and the inclusion of Zhejiang Shenghe Company into Kaiying Network Co., Ltd.'s consolidated financial statements, while concealing the reason for the aforementioned adjustment to the revenue recognition policy. On the same day: The stock price of Kaiying Network rose by 9.98%. The online game index fell by 3.50%, with a deviation of 13.48% from the stock price. The SME Composite Index fell by 1.61%, with a deviation of 11.59% from the stock price. The total trading volume of accounts other than the involved account group was 32.58 million shares, compared with 7.66 million shares, 10.96 million shares, and 8.40 million shares in the previous three days respectively.

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Between January 6 and March 6, 2018, Kaiying Network Co., Ltd. announced a suspension of trading. The next day, Defendant Chen Fang instructed Wang Dong and others to sell all Kaiying Network shares held by the involved account group. According to statistics, from June 8, 2017 to March 7, 2018, the involved account group traded Kaiying Network shares on 143 out of a total of 148 trading days. It cumulatively bought over 430 million shares (including over 18.15 million bonus shares) and cumulatively sold over 448 million shares (clearing all positions), realizing a total profit of over RMB 199 million. During this period, the stock price of Kaiying Network was RMB 34 per share on June 8, 2017, and reached RMB 58.16 per share on December 12 of the same year (adjusted price after rights, the highest price during the manipulation period).

On March 30 and July 13, 2018, at the urging of Defendant Wang Yue, Defendant Chen Fang paid RMB 20 million and RMB 8 million respectively as repayments to the bank account designated by Wang Yue.

II. Facts of Harboring

Around April 2, 2019, Defendant Wang Yue and others went to Shangrao City, Jiangxi Province, and met with Defendant Yuan Xianglong and involved person Zhao Wenbin. Subsequently, Wang Yue and others stayed in Apartment 1813, Building B of Sunshine Times, arranged by Yuan Xianglong and Zhao Wenbin. In addition, Yuan Xianglong and others also arranged for personnel to be responsible for Wang Yue and others' three meals a day.

The evidence found by the original judgment to establish the above facts includes: Documentary evidence such as Kaiying Network Co., Ltd.'s industrial and commercial registration materials, relevant contracts, agreements, settlement statements, commitments, resolutions, official replies, security fund transfer records, margin account transaction details, bank account transaction details, securities account opening information, and "House Lease Contracts"; Testimonies of witnesses Feng Xianchao, Sun Hua, Ma Niying, Yu Junhua, Wang Zheng, Song Lili, Jin Feng, Chen Fei, Ye Jianfang, Xie Xiaoping, Liu Cuie, Wu Liping, Zhang Jianfu, Wang Dong, Xu Yebo, Chen Bin, etc.; Forensic accounting report No. issued by Shanghai Hugang Jinmao Certified Public Accountants Co., Ltd. (hereinafter referred to as the "Forensic Accounting Report"); Relevant "Situation Explanations", "Case Incident Reports"; Confessions of the four defendants.

The original judgment held that Defendant Wang Yue, as the major shareholder and former chairman of Kaiying Network Co., Ltd., and Defendant Sheng Liyuan, as the secretary of the company's board of directors, conspired with Defendant Chen Fang. Wang Yue and Sheng Liyuan issued false or uncertain major information, and controlled the content and timing of information disclosure by means of centralized release, delayed release, etc., thereby inducing or misleading investors to make investment decisions. Chen Fang instructed others to conduct continuous transactions using more than 2 billion yuan of jointly raised funds, 279 accounts actually controlled, and inside information leaked by Sheng Liyuan, affecting the trading price and volume of Kaiying Network and realizing a profit of more than 199 million yuan. Therefore, their acts all constituted the crime of manipulating the

securities market, and the circumstances were particularly serious. In the joint crime, both Wang Yue and Chen Fang were principal offenders, and Sheng Liyuan was an accessory; Wang Yue reported others' crimes which were verified true, and thus may be legally recognized as having rendered meritorious service; Chen Fang voluntarily surrendered and truthfully confessed after arriving at the case, and should be legally recognized as having the circumstance of voluntary surrender. Considering the above sentencing circumstances and others, it was decided to impose a lighter punishment on Wang Yue and Chen Fang, and a reduced punishment on Sheng Liyuan. Defendant Yuan Xianglong, knowing that Defendant Wang Yue had fled to Shangrao City, Jiangxi Province on suspicion of a crime, still arranged accommodation for Wang Yue, etc., and his act constituted the crime of harboring. In accordance with the provisions of Articles 182, 310, paragraph 1 of Article 25, paragraphs 1 and 4 of Article 26, Article 27, Article 64, paragraph 1 of Article 67, Article 68, Article 72, and Article 73 of the Criminal Law of the People's Republic of China, the defendants are sentenced as follows: Defendant Wang Yue is sentenced to five years and six months in prison and a fine of RMB 10 million for the crime of manipulating the securities market; Defendant Sheng Liyuan is sentenced to four years in prison and a fine of RMB 5 million for the crime of manipulating the securities market; Defendant Chen Fang is sentenced to five years and six months in prison and a fine of RMB 185 million for the crime of manipulating the securities market; Defendant Yuan Xianglong is sentenced to one year in prison, suspended for one year for the crime of harboring; The illegal gains of Defendant Chen Fang, totaling RMB 199 million, are ordered to be confiscated.

Appellant Wang Yue and his defender argued that the original judgment erroneously presumed Wang Yue's desire for a stock price increase as the criminal motive for manipulating the stock price, and that Wang Yue had no criminal acts, thus he did not constitute the crime of manipulating the securities market. Even if Wang Yue is deemed to have committed the crime of manipulating the securities market, he should be regarded as an accessory. The original judgment imposed an excessively severe sentence on Wang, and they requested this court to impose a lighter punishment on him.

Appellant Sheng Liyuan and his defender do not dispute the original judgment's conviction that Sheng committed the crime of manipulating the securities market. However, they argue that the finding that the announcements issued with Sheng Liyuan's participation constituted market manipulation is inconsistent with the facts, and that the original judgment imposed an excessively severe sentence on Sheng. They request this court to impose a lighter punishment on Sheng.

Appellant Chen Fang and his defender argued that Chen Fang should be identified as an accessory. The original judgment failed to follow the sentencing recommendation of the public prosecution organ to impose a suspended sentence on Chen Fang, and the sentence imposed was excessively severe. They earnestly requested this court to revoke the original judgment and remand the case for a retrial. For this purpose, the defender presented to the court the following evidence: the "Research Reports" of Kaiying Network from August 28, 2017 to April 27, 2018,

details of institutional shareholdings, the institutional shareholding statement from June 7, 2017 to December 14, 2018, the Administrative Penalty Decision issued by the Fujian Regulatory Bureau of the China Securities Regulatory Commission, the "Block Trading Agreement", Wang Zheng's fund transfer records, and the block trading details statement, etc.

The Shanghai Municipal People's Procuratorate held that the facts found in the original judgment are clear, the evidence is authentic and sufficient, the application of law is correct, the sentencing is appropriate, and the trial procedure is lawful. It recommends that this court dismiss the appeal and uphold the original judgment.

The facts and evidence ascertained in the trial of this court are the same as those in the original judgment.

Based on the facts and evidence already ascertained through the trial, this court makes the following evaluations on the opinions of all parties in the second-instance proceedings:

I. Issue Concerning Whether Wang Yue Constitutes the Crime of Manipulating the Securities Market

According to the investigation, Sheng Liyuan confessed after arriving at the case that in the second half of 2016, Wang Yue asked him to find a way to solve the loss problem due to the failure of the fixed increase project, otherwise, the corresponding loss would be deducted from the stocks he held. For this reason, he found Ma Niying and asked her to help find someone from the market to manipulate and drive up the stock price. Wang Yue's idea was to let him find someone to drive up the stock price on the one hand, and intensively issue positive announcements in the second half of 2017 to cooperate with driving up the stock price on the other hand. In February 2017, he got to know Chen Fang through Yu Junhua and Ma Niying. In April of the same year, Chen Fang met with him alone to discuss the specific matters of stock manipulation. Sheng Liyuan's confession was corroborated by the testimonies of witnesses Ma Niying and Yu Junhua, as well as Chen Fang's confession. Although Wang Yue refused to admit his involvement in the manipulation conspiracy after arriving at the case, as the chairman of Kaiying Network Co., Ltd. and Sheng Liyuan's boss, he had the motive for manipulation. The fact that he instructed Sheng Liyuan to cooperate with Chen Fang in the manipulation should be confirmed.

Sheng Liyuan further confessed that Chen Fang proposed that Wang Yue contribute 300 million yuan, and Chen would be responsible for the capital allocation. He reported the discussed matters to Wang Yue, who agreed. Subsequently, Wang Yue arranged for him to sign a loan agreement with Chen Fang, stipulating that the funds could not be used for high-risk investments such as stock trading, thereby forming a so-called "firewall." Sheng Liyuan's above-mentioned confession was corroborated by relevant evidence. Both Wang Yue and Chen Fang also confessed to the fact that Wang Yue contributed 360 million yuan. The fact of Wang Yue's capital contribution was further confirmed by the testimonies of witnesses such as Song Lili, Liu Cuie, and Jin Feng, the "Forensic Accounting Report," and relevant bank account transaction details, and

should be recognized.

Sheng Liyuan further confessed that it was Wang Yue's idea to release positive announcements to send positive signals to the market, thereby boosting the stock price. To this end, Wang Yue had already arranged the company's major affairs for the second half of 2017 in the first half of that year, such as the 10-for-10 stock split and the acquisition of Zhejiang Shenghe Company. Sheng Liyuan's above-mentioned confession was corroborated by relevant evidence. Between June 2017 and March 2018, Wang Yue and Sheng Liyuan, taking advantage of their positions, concentrated on releasing the relevant announcements involved in the case. Among them: Announcements 1, 2, and 4, namely "Plans to Invest in 5 Internet Finance Companies", "Restricted Stock Incentive Plan", and "Acquisition of Zhejiang Shenghe Company", constituted "false or uncertain major information"; Announcement 3, "Investment in Establishing Ningbo Kaiying Microfinance Company", fell under the circumstance of "controlling the content, timing, and pace of information disclosure"; Announcement 5, "Profit Distribution and Capital Surplus Conversion to Share Capital", involved "inside information"; Announcement 6, "2017 Performance Forecast T+0", constituted "controlling the content of disclosed information".

The relevant "Forensic Accounting Report" and "Situation Explanations" confirm that after Wang Yue made capital contributions on June 15, July 28, and October 10, 2017, and Chen Fang synchronized the capital allocation, the involved account group showed a net buying volume higher than the net selling volume in each case. After the release of Announcements 1, 2, 5, and 6, the stock price of Kaiying Network showed a significant deviation from the SME Board Composite Index and the Online Game Index. Both the highest stock price and the stock price at the end of the manipulation period also showed a significant deviation from the SME Board Composite Index and the Online Game Index. After Kaiying Network released the announcements, the trading volume of other investors' accounts except the involved account group showed an upward trend, especially after Announcements 4, 5, and 6, with a multiple increase. The above-mentioned acts of Wang Yue, Sheng Liyuan, and Chen Fang not only made the stock price of Kaiying Network reach the originally set target price (the highest stock price was 58.16 yuan per share on December 12, 2017) but also enabled the involved account group to profit more than 199 million yuan.

Based on the above, this court holds that Wang Yue not only initiated the manipulation of Kaiying Network's stock price but also provided funds and conspired with Sheng Liyuan and Chen Fang to jointly implement acts such as concentrated trading with capital advantages, inducing investors through false and uncertain major information, misleading the market by controlling the content and timing of information disclosure, and leaking inside information. These acts affected the trading price and volume of Kaiying Network, and thus his conduct constitutes the crime of manipulating the securities market.

II. Issue Concerning the Role and Status of Wang Yue and Chen Fang in the Joint Crime

Wang Yue, as the chairman of Kaiying Network Co., Ltd., initiated the manipulation of Kaiying Network, provided the huge amount of funds required for the manipulation, and approved the announcements involved in the case. Chen Fang, as the specific planner and implementer of manipulating Kaiying Network, actively raised the huge amount of funds needed and obtained illegal profits of more than 199 million yuan. Both Wang Yue and Chen Fang played important roles and held important positions in the joint manipulation of Kaiying Network in this case. The original judgment's determination that both of them are principal offenders is legally based and not improper.

III. Issue Concerning the Appropriateness of the Sentence in the Original Judgment

Article 182 of the Criminal Law of the People's Republic of China stipulates that whoever manipulates the securities or futures market, if the circumstances are particularly serious, shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and concurrently imposed a fine.

After conspiracy, Wang Yue, Sheng Liyuan, and Chen Fang committed the following acts: Wang Yue and Sheng Liyuan issued false or uncertain major information, and controlled the content and timing of information disclosure through methods such as centralized release and delayed release, thereby inducing or misleading investors to make investment decisions; Chen Fang instructed others to conduct continuous transactions using over 2 billion yuan of jointly raised funds, 279 actually controlled accounts, and inside information leaked by Sheng Liyuan. These acts affected the trading price and volume of Kaiying Network, resulting in a profit of over 199 million yuan, which constitutes a particularly serious circumstance.

The original judgment, based on the sentencing circumstances of the case, has already imposed a lighter punishment on Wang Yue and a reduced punishment on Sheng Liyuan, sentencing Defendant Wang Yue to five years and six months in prison and a fine of RMB 10 million; and Defendant Sheng Liyuan to four years in prison and a fine of RMB 5 million. The sentencing is appropriate.

Although Chen Fang voluntarily surrendered, he was a principal offender rather than an accessory as claimed by the public prosecution authority. The original judgment, therefore, did not sentence him to a suspended term of imprisonment as recommended by the public prosecution authority but imposed a lighter punishment of five years and six months in prison and a fine of RMB 185 million. This judgment is legally grounded and appropriate in sentencing.

Based on the above, this court confirms that the original judgment's determination that Wang Yue, Sheng Liyuan, and Chen Fang committed the crime of manipulating the securities market, and Yuan Xianglong committed the crime of harboring, is supported by clear facts, sufficient and reliable evidence, correct application of law, appropriate sentencing, and lawful trial procedures. The appellant's grounds for appeal and the defender's defense arguments are all rejected by this court. The Shanghai Municipal People's Procuratorate's suggestion to dismiss the appeal and uphold the original judgment is correct and should be supported. In accordance with Article 236, Paragraph 1, Item (1) of the Criminal

Procedure Law of the People's Republic of China, the ruling is as follows:

Dismiss the appeal and uphold the original judgment.

This ruling is a final ruling.

Presiding Judge Xiao Weiqi

Associate Judge Zhao Wugang

Associate Judge Xu Wenwei

Shanghai Higher
People's Court seal
July 16, 2021

This copy is in conformity with the original seal.

Clerk

Qin Ting

Certified True Translation


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Appendix: Relevant Legal Provisions:

《Criminal Procedure Law of the People's Republic of China》

Article 236 After hearing an appeal or protest against a judgment of first instance, the people's court of second instance shall handle the case in accordance with the following circumstances respectively:

(1) If the original judgment finds the facts correctly, applies the law correctly, and the sentencing is appropriate, it shall rule to dismiss the appeal or protest and uphold the original judgment;

.....

上海市高级人民法院

刑事裁定书

(2021)沪刑终10号

原公诉机关上海市人民检察院第一分院。

上诉人（原审被告）王悦，男，1983年5月15日出生于江苏省昆山市，汉族，大学文化，系恺英网络股份有限公司董事长，户籍地上海市杨浦区长白一村201号5室甲，住上海市静安区山西北路28弄滨水大宅11号，因涉嫌犯操纵证券市场罪于2019年5月1日被刑事拘留，同月15日被逮捕。现羁押于上海市第二看守所。

辩护人陈友乐、莫宸屏，上海市光大律师事务所律师。

上诉人（原审被告）盛李原，男，1981年11月12日出生于上海市，汉族，大学文化，系恺英网络股份有限公司董事会秘书、财务总监，住上海市黄浦区学前街111弄1号1702室，因涉嫌犯操纵证券市场罪于2019年3月8日被刑事拘留，同年4月12日被逮捕。现羁押于上海市第二看守所。

辩护人傅朗，上海市汇业律师事务所律师。

上诉人（原审被告）陈方，男，1981年12月23日出生于浙江省绍兴市，汉族，高中文化，系浙江物恒资产管理有限公司、杭州奥圣资产管理有限公司实际控制人，户籍地浙江省绍兴市柯桥区钱清镇顾家荡村丁家坂72号，居住地上海市浦东新区梅花路50弄5号1201室，因涉嫌犯操纵证券市场罪于2019年3月8日被刑事拘留，同年4月12日被逮捕，2020年3月4日被取保候审，同年12月8日被逮捕。现羁押于上海市第二看守所。

辩护人张仲达，上海市尔立律师事务所律师。

辩护人丁彦伶，上海兰迪律师事务所律师。

原审被告袁湘龙，男，1988年12月20日出生于浙江省嵊州市，汉族，大专文化，系江西省上饶市盛六网络科技有限公司、擎游网络科技有限公司总经理，户籍地浙江省嵊州市剡湖街道工农五苑6幢1号，居住地江西省上饶市旭日街道办凤凰西大道76号2幢1单元602室，因犯侵犯著作权罪于2013年1月31日被判处有期徒刑二年，缓刑三年，并处罚金人民币七万元，因涉嫌犯窝藏罪于2019年8月8日被刑事拘留，同年9月2日被逮捕，2020年3月4日、2021年3月4日被取保候审。

上海市第一中级人民法院审理上海市人民检察院第一分院指控原审被告人王悦、盛李原、陈方犯操纵证券市场罪、原审被告

人袁湘龙犯窝藏罪一案，于二〇二〇年十二月十八日作出（2020）沪01刑初25号刑事判决。原审被告人王悦、盛李原、陈方不服，提出上诉。本院于2021年1月21日受理后，依法组成合议庭，于2021年4月19日、6月4日公开开庭审理了本案。上海市人民检察院指派检察员许磊出庭履行职务。上诉人王悦、盛李原、陈方及辩护人陈友乐、莫宸屏、傅朗、张仲达、丁彦伶到庭参加诉讼。其间，上海市人民检察院以本案需补充侦查为由建议延期审理一个月。现已审理终结。

原判认定：

一、操纵恺英网络事实

恺英网络股份有限公司（以下简称恺英网络公司）系在深圳证券交易所上市的公司，股票代码为002517，股票名称为恺英网络。被告人王悦系恺英网络公司大股东、原董事长和法定代表人。被告人盛李原系恺英网络公司原董事会秘书、财务总监。

2015年10月，中国证监会在批准恺英网络公司前身泰亚鞋业股份有限公司重大资产重组项目时，还核准该公司非公开发行不超过人民币（以下币种均同）30亿元的新股募集资金项目（以下简称定增项目）。

2016年4月左右，被告人盛李原经马妮莹、孙华等人介绍，

引入浙商银行股份有限公司、中国民生银行股份有限公司、浙江中大元通融资租赁有限公司（以下分别简称为浙商银行、民生银行、浙江中大公司）和方正东亚信托有限责任公司（后更名为国通信托有限责任公司，以下分别简称为方正信托）参与定增项目。至同年 11 月，上述各方经协商，由浙商银行、民生银行作为优先级，浙江中大公司、方正信托作为夹层级，王政受王悦指使作为劣后级，共同出资完成总额为 19 亿余元的定增项目。其间，王悦向浙商银行、民生银行、浙江中大公司、方正信托承诺，若定增项目期满后股价低于定增发行价，由他承担补足差额责任。此后，因恺英网络股价总体呈下跌趋势，王悦遂要求盛李原想办法解决此事，后采纳了盛李原所提市值管理方案。2017 年 2 月左右，盛李原经马妮莹、余君华介绍与被告人陈方相识，并向陈方介绍了恺英网络公司定增项目等基本情况。同年 5 月，陈方单独约见盛李原，表示可以承接上述业务，但提出需要恺英网络公司（大股东）提供资金以进行利益捆绑。尔后，盛李原在征得王悦同意后与陈方商定由王悦以借款名义出资 3 亿元。此外，陈方、盛李原还商定了预期价格 55 元/股、期间为 2017 年 6 月至 2017 年底、恺英网络公司以控制公告内容和发布节奏方式予以配合和出资顺序等事宜。陈方还向盛李原提供了专门用于联络的移动电话。

2017年6月初,被告人陈方指使助理宋丽丽起草了借款合同,在签名后交由被告人盛李原。同年6月至2018年2月间,被告人王悦先后分4次将共计3.6亿元资金以借款形式支付给陈方。此外,王悦还在恺英网络公司收购浙江盛和公司51%股权时,要求被收购方金丹良于2017年12月前使用7.5亿元股权转让款回购恺英网络。同期,被告人陈方通过上海财泽资产管理有限公司等中介进行配资,另成立奥圣西子一号、奥圣钱江三号等私募证券投资基金自行配资。至此,王悦、陈方共计筹集20亿余元资金。此外,陈方还先后实际控制了奥圣西子一号私募证券投资基金等22个信托账户和户名为卞忠银、蔡丽君、王晓萍等257个个人账户(共计279个账户,以下简称为涉案账户组),由王栋等人通过分仓软件用于股票交易。

2017年6月7日至2018年3月7日间,被告人王悦、盛李原利用分别担任恺英网络公司董事长、董事会秘书的职务便利,集中发布或拖延发布公告,发布不确定和虚假公告,还向被告人陈方泄露内幕信息。同期,被告人陈方指使王栋等人,使用上述资金和涉案账户组,与恺英网络公司公告、内幕信息等相配合,连续交易恺英网络。具体情况如下:

1. 关于拟投资5家互联网金融公司公告

2017年5月底,被告人王悦经与上海翰鑫信息科技有限公司、上海翰迪数据服务有限公司、上海翰惠信息科技有限公司实际控制人和上海合勋车融资产管理有限公司小股东乔延清、上海暖水信息技术有限公司法定代表人敖翔等人协商(以下分别简称翰鑫信息公司、翰迪数据公司、翰惠信息公司、合勋资管公司、暖水信息公司),达成拟以恺英网络公司名义分别向翰迪数据公司、翰惠信息公司、翰鑫信息公司、合勋资管公司、暖水信息公司投资(增资)3,450万元、3,500万元、2,000万元、4,000万元和1,500万元的投资意向。此后,王悦和被告人盛李原在明知上述5个拟投资项目均未达到深圳交易所发布投资类公告金额要求、仅是投资意向等情况下,仍召开第三届董事会第十六次会议,通过了上述拟投资项目。

2017年6月8日,恺英网络公司发布了2017-068号《关于全资子公司拟向上海翰迪数据服务有限公司投资的公告》、2017-069号《关于全资子公司拟向上海翰惠信息科技有限公司投资的公告》、2017-070号《关于全资子公司拟向上海翰鑫信息科技有限公司投资的公告》、2017-071号《关于全资子公司拟向上海合勋车融资产管理有限公司投资的公告》、2017-072号《关于全资子公司拟向上海暖水信息技术有限公司投资的公告》。公告当

日，恺英网络股价涨幅 3.15%。同期，网络游戏指数单日涨幅 0.11%，偏离指数 3.04%；中小板综指单日涨幅 0.03%，偏离指数 3.12%。

同年 7 月至 8 月间，被告人王悦经与乔延清、毛立勋等人进一步商谈后，将向翰迪数据公司、翰惠信息公司的投资分别减至 2,000 万元、1,200 万元，保持向暖水信息公司的投资 1,500 万元（合计 4,700 万元），取消向翰鑫信息公司、合勋资管公司投资，但恺英网络公司未将上述投资变动情况进行持续公告。

2. 关于限制性股权激励计划公告

2017 年 6 月初，被告人王悦、盛李原在明知激励对象无法自筹购买激励股权所需巨额资金的情况下，仍指使恺英网络公司证券事务代表陈非起草了主要内容为向林彬等 8 名恺英网络公司中层管理人员以（半价）17.54 元/股的价格出售总价值为 5.99 亿余元的 3,800 万股恺英网络股票（即每名激励对象需要出资 7,498.35 万元）、公司承诺不为激励对象提供贷款以及其他任何形式的财务资助的《2017 年限制性股权激励计划（草案）》等。此后，恺英网络公司第三届董事会第十七次会议通过了上述计划。

2017 年 6 月 10 日，恺英网络公司发布了 2017-076 号《第三届董事会第十七次会议决议公告》。公告后第一交易日，恺英网络

股价单日涨幅 0.09%。同期，网络游戏指数单日涨幅-1.14%，偏离指数 1.23%；中小板综指单日涨幅-1.11%，偏离指数 1.20%。次日，恺英网络单日涨幅 2.10%；网络游戏指数单日涨幅 1.24%，偏离指数 0.86%；中小板综指单日涨幅 1.29%，偏离指数 0.81%。

此后，恺英网络公司陆续发布了《2017 年限制性股权激励计划激励对象名单》等。同年 9 月 28 日，恺英网络公司发布 2017-141 号《关于终止实施 2017 年限制性股权激励计划的公告》。

3. 关于投资设立宁波恺英小贷公司公告

2016 年底至 2017 年初间，被告人王悦经与中颐财务咨询集团股份有限公司董事长谢孝平和大智慧信息科技有限公司（以下分别简称为中颐财务公司、大智慧公司）商议后，决定共同出资成立互联网小额贷款公司，由谢孝平负责具体筹建事宜。2017 年 3 月 16 日，王悦代表恺英网络公司、谢孝平代表中颐财务公司与大智慧公司代表一起在宁波市海曙区政府签署了成立宁波恺英互联网小额贷款有限公司（以下简称为宁波恺英小贷公司）的《股东出资协议书》。同年 4 月，宁波恺英小贷公司申请材料上报至宁波市金融办。同年 6 月 8 日，宁波市海曙区人民政府印发同意成立宁波恺英小贷公司的《批复》。该《批复》规定宁波恺英小贷公司发起人应当自批复印发之日起 2 个月内完成公司筹建、工商注

册等手续，逾期则作废。同年7月4日，宁波恺英小贷公司董事会选举王悦担任董事长，任期3年。

2017年6月13日，被告人盛李原通过微信指示陈非准备发布拟投资宁波恺英小贷公司公告的相关事宜。同月17日，恺英网络公司在签署上述《股东出资协议书》3个月后、申请材料上报审批2个月后、宁波市海曙区人民政府印发《批复》1周后，发布了2017-083号《关于全资子公司拟投资设立互联网小额贷款公司的公告》。同年8月4日，恺英网络公司在宁波恺英小贷公司已获批复近2个月后、王悦已被选举为宁波恺英小贷公司董事长1个月后，发布了2017-112号《关于全资子公司拟投资设立互联网小额贷款公司的进展公告》。

4. 关于收购浙江盛和公司51%股权公告

2017年初至7月间，被告人王悦经与涉案人金锋商议后达成《股权转让协议》，约定恺英网络公司以现金方式出资16亿余元收购金丹良持有的浙江盛和公司51%股权；金丹良在2017年12月31日前使用7.5亿元收购款回购恺英网络。同年7月初，被告人盛李原指示陈非准备相关董事会议程和材料。同月中旬某日，盛李原至被告人陈方租住的文华东方酒店1040房间，将上述内幕信息告知陈方。

2017年7月26日，恺英网络公司召开第三届董事会第十八次、第十九次会议，通过了《关于变更募集资金投资项目的议案》。同月27日，恺英网络公司发布了2017-101号《关于变更募集资金投资项目的公告》和2017-102号《关于对外投资的公告》。次日，涉案账户组之外的其他账户总成交量为596万股，前三日分别为146万股、201万股、193万股。

5. 关于利润分配及资本公积金转增股本公告

2017年8月初，被告人王悦经与被告人盛李原商议后，决定进行恺英网络公司2017年半年度利润分配和资本公积金转增股本。为此，盛李原指示陈非准备相关董事会议程和材料。同月中旬某日，盛李原至被告人陈方租住的文华东方酒店1040房间，将上述内幕信息告知陈方。

2017年8月28日，恺英网络公司发布2017-123号《2017年半年度利润分配及资本公积金转增股本预案》。当日，恺英网络股价单日涨幅7.46%；网络游戏指数单日涨幅1.3%，偏离指数6.16%；中小板综指单日涨幅1.16%，偏离指数6.30%；涉案账户组之外的其他账户总成交量为1,309万股，前三日分别为165万股、259万股、329万股。

6. 关于2017年业绩预告公告

2017 年 10 月，被告人盛李原要求恺英网络公司聘请的天职国际会计师事务所高级审计员李靖豪将公司原游戏收入确认政策“T+1”调整为“T+0”，即增加一个月收入。此后，审计人员按照上述调整进行审计，使得恺英网络公司 2017 年利润预告增加了 6,000 万元左右（同比增加 8%）。此后，盛李原指示陈非办理了相关公告手续。

2017 年 10 月 30 日，恺英网络公司发布了主要内容为净利润大幅度上升的《2017 半年度报告摘要和 2017 年前三季度业绩预告》。上述公告将业绩变动原因表述为报告期内多款新游戏表现强劲和浙江盛和公司纳入恺英网络公司合并报表内容，隐瞒了上述收入确认政策调整原因。当日，恺英网络股价单日涨幅 9.98%；网络游戏指数单日涨幅-3.50%，偏离指数 13.48%；中小板综指单日涨幅-1.61%，偏离指数 11.59%；涉案账户组之外的其他账户总成交量为 3,258 万股，前三日分别为 766 万股、1,096 万股、840 万股。

2018 年 1 月 6 日至 3 月 6 日间，恺英网络公司公告停牌。次日，被告人陈方指使王栋等人将涉案账户组所持恺英网络全部出售。经统计，自 2017 年 6 月 8 日起至 2018 年 3 月 7 日止，涉案账户组在共计 148 个交易日间的 143 个交易日进行恺英网络交易，

累计买入 4.3 亿余股（分得红股 1,815 万余股），累计卖出 4.48 亿余股（沽清），共计获利 1.99 亿余元。期间，恺英网络股价在 2017 年 6 月 8 日为 34 元/股，在同年 12 月 12 日为 58.16 元/股（后复权价格，为操纵期最高价格）。

2018 年 3 月 30 日和 7 月 13 日，被告人陈方在被告人王悦催讨下，分别将 2,000 万元和 800 万元作为还款支付至王悦指定的银行账户。

二、窝藏事实

2019 年 4 月 2 日左右，被告人王悦等人至江西省上饶市，与被告人袁湘龙、涉案人赵文斌会合。此后，王悦等人入住于袁湘龙、赵文斌安排的阳光时代 B 座 1813 室公寓内。此外，袁湘龙等人还安排人员负责王悦等人的一日三餐。

原判认定上述事实的证据有，恺英网络公司的工商登记资料、相关合同、协议、结算单、承诺书、决议、批复、保证金转账记录、配资账户交易明细、银行账户交易明细、相关证券账户开户信息、《房屋租赁合同》等书证，证人冯显超、孙华、马妮莹、余君华、王政、宋丽丽、金锋、陈非、叶建芳、谢孝平、刘翠娥、吴丽平、张剑福、王栋、徐烨波、陈斌等人的证言，上海沪港金茂会计师事务所有限公司出具的沪金审财[2018]司会鉴字第 S200

号《会计鉴定意见书》(以下简称为《会计鉴定》)、相关《情况说明》《案发经过》和4名被告人的供述等。

原判认为,被告人王悦作为恺英网络公司大股东、原董事长,被告人盛李原作为该公司董事会秘书,经与被告人陈方共谋,由王悦、盛李原发布虚假或者不确定的重大信息、采用集中发布、拖延发布等方法控制信息披露的内容、时点,从而诱导或者误导投资者作出投资决策,由陈方指使他人利用共同筹集的20亿余元资金、实际控制的279个账户和盛李原泄露的内幕信息进行连续交易,影响恺英网络交易价格和交易量,获利达1.99亿余元,故其行为均已构成操纵证券市场罪,且属于情节特别严重。在共同犯罪中,王悦、陈方均系主犯,盛李原系从犯;王悦检举揭发他人犯罪经查证属实,依法可认定具有立功表现;陈方自行到案后能如实供述,依法应当认定具有自首情节。综合上述量刑情节等,决定对王悦、陈方从轻处罚,对盛李原减轻处罚。被告人袁湘龙明知被告人王悦因涉嫌犯罪而潜逃至江西省上饶市,仍为王悦安排住所等,其行为已构成窝藏罪。依照《中华人民共和国刑法》第一百八十二条、第三百一十条、第二十五条第一款、第二十六条第一款和第四款、第二十七条、第六十四条、第六十七条第一款、第六十八条、第七十二条、第七十三条之规定,以操纵证券

市场罪分别判处被告人王悦有期徒刑五年六个月，并处罚金人民币一千万元；被告人盛李原有期徒刑四年，并处罚金人民币五百万元；被告人陈方有期徒刑五年六个月，并处罚金人民币一亿八千五百万元；以窝藏罪判处被告人袁湘龙有期徒刑一年，缓刑一年；追缴被告人陈方违法所得人民币一亿九千九百万元。

上诉人王悦及其辩护人提出，原判错误地将王悦希望股价上涨的心态预设为操纵股价的犯罪动机，且王悦无犯罪行为，因此其不构成操纵证券市场罪。即便认定王悦构成操纵证券市场罪，王亦属从犯，原判对王量刑过重，请求本院对王从轻处罚。

上诉人盛李原及其辩护人对原判认定盛犯操纵证券市场罪的罪名不持异议，但对盛李原参与发布的公告属于操纵证券市场与事实不符，且原判对盛量刑过重，请求本院对盛从轻处罚。

上诉人陈方及其辩护人提出，应当认定陈方为从犯，原判未按照公诉机关的量刑建议，对陈方判处缓刑，量刑过重，恳请本院撤销原判，发回重审。为此，辩护人向法庭出示了2017年8月28日至2018年4月27日恺英网络的《研报》、机构持仓明细、2017年6月7日至2018年12月14日的机构持股表、中国证券监督管理委员会福建监管局行政处罚决定书、《大宗交易协议》、王政转账记录、大宗交易明细表等。

上海市人民检察院认为，原判认定的事实清楚，证据确实、充分，适用法律正确，量刑适当，审判程序合法，建议本院驳回上诉，维持原判。

本院经审理查明的事实及证据与原判相同。

根据现已审理查明的事实和证据，本院对二审诉讼各方意见评判如下：

一、关于王悦是否构成操纵证券市场罪的问题

经查，盛李原到案后供述，2016年下半年，王悦因定增项目失败而让他想办法解决亏损问题，否则就从他所持有的股票中扣除相应损失。他为此找到马妮莹，让她帮忙从市场上找人操盘拉升股价。王悦的想法是一边让他找人抬拉股价，另一边在2017年下半年密集发布利好公告配合抬拉股价。2017年2月，他通过余君华、马妮莹与陈方相识。同年4月，陈方单独约他见面，与他一起商量的操盘具体事宜。盛李原的供述得到了证人马妮莹、余君华的证言及陈方供述的印证。王悦到案后虽然拒不供认其参与操纵预谋事实，但王悦系恺英网络公司的董事长，系盛李原的老板，具备操纵动机，其指使盛李原与陈方合作进行操纵的事实，应予确认。

盛李原另供述，陈方提出由王悦出资3亿元，配资由陈负责。

他将商量的事情向王悦作了汇报。王悦表示同意。此后，王悦安排他与陈方签订借款协议，约定资金不能用于买卖股票等高风险投资，从而形成所谓的防火墙。盛李原的上述供述得到了相关证据的印证。王悦、陈方对王悦出资 3.6 亿元的事实亦均供认不讳。王悦出资的事实，还得到了宋丽丽、刘翠娥、金锋等证人的证言、《会计鉴定》及相关银行账户交易明细的证实，应予确认。

盛李原还供述，通过发布利好公告向市场传递积极信号从而有利于股价上涨是王悦的想法。为此，王悦已在 2017 年上半年安排好下半年公司主要事务，例如 10 送 10、收购浙江盛和公司等。盛李原的上述供述得到了相关证据的印证。2017 年 6 月至 2018 年 3 月间，王悦、盛李原利用职务便利集中发布了涉案相关公告。其中，公告一、二、四即“拟投资 5 家互联网金融公司”“限制性股权激励计划”“收购浙江盛和公司”属于“虚假或不确定的重大信息”；公告三“投资设立宁波恺英小贷公司”属于“控制信息披露内容、时点、节奏”的情形；公告五“利润分配及资本公积金转增股本”属于“内幕信息”；公告六“2017 年业绩预告 T+0”属于“控制披露信息的内容”。

相关《会计鉴定》《情况说明》证实，王悦在 2017 年 6 月 15 日、7 月 28 日和 10 月 10 日出资和陈方同步配资后，涉案账户组

均出现净买入高于净卖出情形；恺英网络股价在公告一、公告二、公告五、公告六发布后较中小板综指、网络游戏指数等均呈现明显偏离，最高股价和操纵期末股价较中小板综指、网络游戏指数亦呈明显偏离；恺英网络公司发布公告后，除涉案账户组外的其他投资者账户成交量呈增长趋势，尤其是公告四、五、六后的增长幅度呈倍数增长。王悦、盛李原、陈方的上述行为不仅使得恺英网络股价到过原先设定的目标价位（最高股价为2017年12月12日的58.16元/股），而且使得涉案账户组获利1.99亿余元。

据此，本院认为，王悦不仅起意操纵恺英网络股价，而且还提供资金，伙同盛李原、陈方共同实施集中资金优势连续买卖、利用虚假和不确定重大信息诱导、通过控制信息披露内容和时点误导、泄露内幕信息等行为，影响恺英网络交易价格和交易量，其行为符合操纵证券市场罪的构成要件。

二、关于王悦、陈方在共同犯罪中作用、地位的问题

王悦作为恺英网络公司董事长起意操纵恺英网络，提供操纵所需的巨额资金，审批涉案公告。陈方作为操纵恺英网络的具体谋划及实施者积极筹集所需巨额资金，并获得1.99亿余元的非法利润。王悦、陈方在本案共同操纵恺英网络中均起重要作用、处于重要地位，原判认定其两人均系主犯，于法有据，并无不当。

三、关于原判量刑是否适当的问题

《中华人民共和国刑法》第一百八十二条规定，操纵证券、期货市场，情节特别严重的，处五年以上十年以下有期徒刑，并处罚金。

王悦、盛李原、陈方经共谋，由王悦、盛李原发布虚假或者不确定的重大信息、采用集中发布、拖延发布等方法控制信息披露的内容、时点，从而诱导或者误导投资者作出投资决策，由陈方指使他人利用共同筹集的 20 亿余元资金、实际控制的 279 个账户和盛李原泄露的内幕信息进行连续交易，影响恺英网络交易价格和交易量，获利达 1.99 亿余元，属于情节特别严重。

原判根据本案的量刑情节，已对王悦从轻处罚，对盛李原减轻处罚，分别判处被告人王悦有期徒刑五年六个月，并处罚金人民币一千万元；被告人盛李原有期徒刑四年，并处罚金人民币五百万元，量刑适当。

陈方虽有自首情节，但其在共同犯罪中系主犯，并非公诉机关认为的从犯，故原判未对陈方按照公诉机关的量刑建议判处缓刑，而对陈方从轻处罚，判处有期徒刑五年六个月，并处罚金人民币一亿八千五百万元，于法有据，量刑恰当。

综上，本院确认，原判认定王悦、盛李原、陈方犯操纵证券

市场罪、袁湘龙犯窝藏罪的事实清楚、证据确实、充分，适用法律正确，量刑适当，审判程序合法。上诉人的上诉理由及辩护人的辩护意见，本院均不予采纳。上海市人民检察院建议驳回上诉，维持原判的意见正确，应予以支持。依照《中华人民共和国刑事诉讼法》第二百三十六条第一款第（一）项之规定，裁定如下：

驳回上诉，维持原判。

本裁定为终审裁定。

审 判 长	肖伟琦
审 判 员	赵武罡
审 判 员	徐文伟



本件与原本核对无异

书 记 员 秦 婷

附：相关法律条文

《中华人民共和国刑事诉讼法》

第二百三十六条 第二审人民法院对不服第一审判决的上诉、抗诉案件，经过审理后，应当按照下列情形分别处理：

（一）原判决认定事实和适用法律正确、量刑适当的，应当裁定驳回上诉或者抗诉，维持原判；

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