

Former China Head of Harris Corporation Pays \$46,000 to Settle SEC's FCPA Allegations 哈里斯公司前中国主管支付 46,000 美元以和解美国证交会的 FCPA 指控

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Anti-Corruption 反腐败

On September 13, 2016, Jun Ping Zhang (“Zhang”), former head of Harris Corporation’s (“Harris”) subsidiary in China, agreed to pay \$46,000 to settle [allegations](#) by the U.S. Securities and Exchange Commission (“SEC”) that Zhang knowingly authorized and facilitated bribes to Chinese government officials at state-owned hospitals and local health departments and caused Harris’s books and records to inaccurately record these payments as legitimate business expenses. The SEC alleged that up to \$1 million in improper payments were made during April 2011 and April 2012 and as a result, the China-based subsidiary was awarded over \$9.6 million in contracts by state-owned entities.

2016 年 9 月 13 日，哈里斯公司（Harris Corporation）（下称“哈里斯”）中国子公司的前主管张俊平同意支付 46,000 美元，以和解美国证券交易委员会（下称“证交会”）对其蓄意授权和促成向国有医院和地方卫生部门的中国政府官员行贿，并导致哈里斯的账簿和记录不准确地将这些付款记载为正当业务费用的[指控](#)。证交会指称，在 2011 年 4 月至 2012 年 4 月期间有多达 100 万美元的不当付款，而哈里斯的中国子公司因此从国有机构获得价值超过 960 万美元的合同。

Background and Alleged Misconduct 背景及所指不当行为

Harris, a U.S. company and listed on the New York Stock Exchange, is a global provider of international communications and information technology services. In April 2011, Harris acquired an Arizona-based company called CareFx Corporation (“CareFx”), including CareFx’s China-based subsidiary, Hunan CareFx Information Technology, LLC (“CareFx China”). Zhang was CareFx China’s Chairman and CEO before the acquisition; he continued to manage CareFx China under the same titles after the acquisition. CareFx’s and CareFx China’s books and records were consolidated into Harris’s financial statements.

哈里斯是一家在纽约证券交易所上市的美国公司。哈里斯是国际通讯和信息技术服务的全球供应商。2011 年 4 月，哈里斯收购了总部位于亚利桑那州的凯尔飞公司（CareFx Corporation）（下称“凯尔飞”），包括凯尔飞的中国子公司湖南凯歌信息技术有限公司（Hunan CareFx Information Technology, LLC；下称“凯歌”）。在哈里斯收购凯尔飞之前，

张俊平是凯歌的董事长兼首席执行官。凯尔飞被收购之后，张俊平继续担任凯歌的董事长和首席执行官管理凯歌。凯尔飞和凯歌的账簿和记录一同并入哈里斯的财务报表。

According to the SEC's [Cease and Desist Order](#), part of CareFx China's business in China included the sale of its electronic medical records software to China's state-owned hospitals and local health departments. The SEC alleged that at least during April 2011 and April 2012, Zhang knowingly authorized or facilitated improper payments made in various forms to government officials at these state-owned hospitals and health departments in exchange for business contracts. The SEC alleged that CareFx China's sales employees falsified their expense reports to obtain reimbursements for the improper payments and disguised the improper payments as "entertainment," "office expenses," and "transportation," which were then improperly recorded in CareFx China's books and records as legitimate business expenses and consulting fees.

根据证交会的[禁止令](#)，凯歌的中国业务包括向中国国有医院和地方卫生部门出售其电子医疗记录软件。证交会指称，至少在 2011 年 4 月至 2012 年 4 月期间，为获得商业合同，张俊平蓄意授权或促成了向这些国有医院和卫生部门的政府官员多种形式的~~不当~~付款。证交会指称，凯歌的销售员工伪造了费用报告，以报销被假以“款待”、“办公开支”和“交通费”等名目的~~不当~~付款。这些~~不当~~付款在凯歌的账簿和记录中被不当地记载为正当业务费用和咨询费用。

The SEC alleged that Zhang not only knowingly allowed these falsified expense reports to be submitted for reimbursements and thus hid the true nature of the expenses from Harris, Zhang also directed CareFx China's sales employees not to give expensive gifts to avoid getting caught. The SEC further alleged that Zhang failed to disclose to Harris any information relating to the improper payments during the pre-acquisition due diligence process.

证交会指称，张俊平不仅蓄意批准报销这些伪造的费用报告，从而使哈里斯无法了解这些费用的真实性质，并且，张俊平还指示凯歌的销售员工不要赠送昂贵的礼品以免被发现。证交会进一步指称，在收购前的尽职调查期间，张俊平未向哈里斯披露与~~不当~~付款相关的任何信息。

Specifically, the SEC alleged that:

证交会具体指控称：

- In April 2011, Zhang authorized a CareFx China sales manager's request of RMB 30,000 (about \$4,600) to buy the director of Zhongnan Hospital of Wuhan University ("Zhongnan Hospital") a new laptop computer, cell phone, and camera to replace the director's stolen ones. The sales manager noted that other companies would do so if CareFx China did not do it. Zhang complimented the sales manager for "doing a great job" in an email and later approved RMB 36,100 (about \$5,600) to cover additional expenses for providing travel and entertainment to Zhongnan Hospital's officials. Later the same year, Zhongnan Hospital awarded a \$165,000 contract to CareFx China.

2011 年 4 月，张俊平授权凯歌的一名销售经理申请人民币 30,000 元（约 4,600 美元）以为武汉大学中南医院（下称“中南医院”）院长购买一台新笔记本电脑、一部新手

机和一台新照相机以替换其失窃物品。该销售经理指出，如果凯歌不这么做，其他公司也会这么做。张俊平在电子邮件中称赞该销售经理“做得非常好”，并最终批准了人民币 36,100 元（约 5,600 美元），超出部分用以支付向中南医院的官员提供旅行和招待的额外费用。当年较晚时，中南医院与凯歌签订了价值 165,000 美元 的合同。

- In October 2011, a CareFx China sales manager purchased meals for several officials in the Nansha District Health Bureau who were responsible for awarding a government contract and obtained an oral promise from the bureau’s Deputy Director that CareFx China would win the bid. Later, \$2,300 was requested to gift three Apple iPhones to secure “strong cooperation and support” from the officials. In January 2012, the Health Bureau awarded a \$93,000 contract to CareFx China.

2011 年 10 月，凯歌的一名销售经理为南沙区卫生局负责授予政府合同的几名官员支付了餐饮费用，并得到该局副局长让凯歌中标的口头承诺。之后，该销售经理申请 2,300 美元经费购买三台苹果 iPhone 手机赠送给上述官员以获得这些官员的“强有力的合作和支持”。2012 年 1 月，该卫生局与凯歌签订了价值 93,000 美元 的合同。

- In separate incidents, Zhang authorized payments of thousands of US dollars’ worth of gifts, gift cards, entertainment, and “bonuses” to government officials at state-owned hospitals and health departments.

在其他数次情形中，张俊平授权向国有医院和卫生部门的政府官员支付了价值数千美元的礼品、购物卡、招待费用和“奖金”等。

- In total, CareFx China made approximately \$200,000 to \$1 million improper payments to Chinese government officials and was awarded government contracts worth over \$9.6 million.

凯歌合计向中国政府官员支付了约 20 万至 100 万美元的不当付款，并因此获得价值超过 960 万美元 的政府合同。

The SEC noted that despite Zhang’s intentional cover-up of CareFx China’s practices, Harris found out about them several months after the acquisition and in April 2012, Harris relieved Zhang of his duties as CareFX China’s Chairman and CEO and in July 2012, terminated Zhang’s employment with Harris. The SEC further noted that Harris terminated all CareFx China employees and ceased business activity in China in June 2015.

证交会指出，尽管张俊平有意掩盖凯歌的不当行为，哈里斯仍在收购凯尔飞后数月内发现了其不当行为。2012 年 4 月，哈里斯免去张俊平凯歌董事长兼首席执行官的职务，并于 2012 年 7 月解雇了张俊平。证交会进一步指出，哈里斯于 2015 年 6 月解聘了所有的凯歌雇员，并终止了其在中国所有的业务。

Consequences 后果

According to the SEC's order, Zhang violated the anti-bribery, books and records, and internal controls provisions of the FCPA and caused Harris to violate the books and records provisions. Zhang agreed to pay a civil penalty of \$46,000 to settle the SEC's charges.

根据证交会的命令，张俊平违反了美国反海外腐败法（FCPA）的反贿赂、账簿和记录 and 内部控制的相关条文，并致使哈里斯违反了账簿和记录的相关条文。张俊平同意支付 46,000 美元的民事罚金以和解证交会的指控。

Observations and Lessons Learned 观察和汲取的教训

This settlement reinforces lessons learned from other anti-corruption cases, including the need to:

本次和解进一步印证了我们从其他反腐败案例中获得的教训，包括采取以下措施的必要性：

- Develop and implement effective internal controls designed to verify gifts and entertainment, including repeated low-value transactions.

拟订和实施有效的内部控制，以核实礼品和款待，包括重复低值交易。

- Adopt robust, risk-based control and audit procedures sufficient to ensure that all company policies are strictly complied with and that management override of controls are closely monitored and prohibited.

采用健全、基于风险的控制和审计流程，以确保所有公司政策得到严格遵守，并严密监控和禁止管理层对内控措施的干预。

- Acquire sufficient knowledge of the local and customized practices of subsidiaries to ensure adequate oversight of the foreign business activities, particularly in businesses and countries with a history of corruption or related issues.

充分了解当地和惯常的外国子公司做法，确保对外国业务活动实施充分监督，对那些在有腐败历史或相关问题的国家和企业中进行的业务活动尤其应如此。

- Conduct thorough anti-corruption due diligence on a target company before entering into an acquisition agreement, and ensure that post-closing diligence identifies and remediates conduct that was not already addressed prior to closing.

在签订收购协议之前对标的公司进行详尽的反腐败尽职调查，并确保交割后的尽职调查发现 and 弥补交割前未解决的问题。

If you have any questions concerning the material discussed in this document, please contact any of the following members of our **Global Anti-Corruption Practice**:

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