

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87138 / September 27, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19543

In the Matter of

**WESTPORT FUEL
SYSTEMS, INC. and
NANCY GOUGARTY,**

Respondents.

**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**

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 Westport Fuel Systems, Inc. (“Westport”) and Nancy Gougarty (“Gougarty”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”) 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 admitting the Commission’s jurisdiction over them and the subject matter of these proceedings, Respondents consent 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

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.

Summary

1. This matter concerns violations of the anti-bribery, books and records, and internal controls provisions of the Foreign Corrupt Practices Act (“FCPA”) by Westport Fuel Systems, Inc., a Canadian clean fuel technology company headquartered in Vancouver, Canada, and its former Chief Executive Officer, Nancy Gougarty.

2. Beginning no later than 2016, Westport, through Gougarty and others, engaged in a scheme to bribe a Chinese foreign government official (“Government Official”) to obtain business and a cash dividend payment from Westport’s Chinese joint venture (“JV” or “joint venture”). JV’s largest shareholder during the relevant period was a Chinese state-owned entity (“SOE-1”). The Government Official held a senior position at SOE-1. At the request of SOE-1, Westport, acting through Gougarty and others, agreed to, and did, transfer at a low valuation a portion of Westport’s shares in the joint venture to a Chinese private equity fund in which Gougarty and others had been informed that the Government Official held a financial interest. In exchange, Westport, through Gougarty and others, believed that the Government Official would use his influence to cause the JV to authorize an increased dividend payment of \$3.5 million to Westport and to execute a framework supply agreement between the JV and Westport.

3. As a result of the bribery scheme, Westport violated the books and records provisions of the FCPA by maintaining false books and records that concealed the identity of the true counterparty to the share transfer. Westport also failed to devise and maintain a sufficient system of internal accounting controls, and Gougarty was a cause of this violation. Gougarty knowingly circumvented the internal accounting controls that Westport did maintain, by, for example, concealing the role of the private equity fund and by failing to require that due diligence be conducted on the fund. Lastly, Gougarty signed a certification regarding internal controls that was attached to Westport’s Form 40-F for the year ending December 31, 2016. Gougarty’s representations in that certification were false, as described below.

Respondents

4. **Westport Fuel Systems, Inc. (“Westport”)** (NASDAQ: WPRT) is a Canadian corporation headquartered in Vancouver, Canada, that designs and manufactures clean fuel systems. Westport’s common stock is registered under Section 12(b) of the Exchange Act, and it also lists its securities on the Toronto Stock Exchange. Westport’s subsidiaries include a Hong Kong entity that owns shares in Westport’s Chinese joint venture, JV. Prior to the share transfer in August 2016, the owners of the JV were Westport’s wholly owned subsidiary in Hong Kong, SOE-1 and a privately held Hong Kong conglomerate.

5. **Nancy Gougarty** (age 64) is a United States citizen whose principal residence is in Leesville, South Carolina. Gougarty joined Westport in July 2013 as the Chief Operating Officer. She was the Chief Executive Officer and a member of Westport’s board of directors from July 2016 until January 2019, when she voluntarily retired.

Facts

6. In March of 2013, at the direction of the Government Official, SOE-1 proposed taking the JV public in China through an initial public offering (“IPO”). The JV’s manager, appointed by SOE-1, falsely represented to Westport that Chinese law required SOE-1 to have a majority interest in the joint venture to qualify for an IPO. Accordingly, the manager of the JV

advised Westport that a preliminary step in the IPO process would involve restructuring the joint venture so that a portion of the shares held by Westport and a privately held Hong Kong conglomerate would have to be transferred to SOE-1 and a Chinese private equity fund (in which the Government Official held a financial interest). Although the shares were transferred to the private equity fund, the contemplated IPO never took place.

7. Once the proposed restructuring was complete, SOE-1 would own 51% of JV's shares, Westport would own 23.33% through its Hong Kong subsidiary, the Hong Kong conglomerate would own 16.67%, and the Chinese private equity fund would own 9%. On February 11, 2014, the JV board of directors approved the proposed share transfer. Gougarty, Westport's Chief Operating Officer at the time, led the Westport team in the negotiations with SOE-1.

8. In April 2014, Gougarty recruited and hired a Chinese national to head Westport's Asia Pacific regional office. Gougarty had worked closely with the Asia Pacific general manager ("the Asia Pacific GM") for four years in a different company before hiring him to join her at Westport. Based in Shanghai, the Asia Pacific GM played a central role in the negotiations with SOE-1 and the Chinese private equity fund due to his legal training, his native Mandarin language skills and his physical proximity to JV and SOE-1 in China.

9. The Asia Pacific GM then joined Gougarty in negotiating the terms of the share transfer with the JV's manager and an SOE-1 executive, who acted on behalf of the Government Official. Based on information that he obtained in his conversations with the JV manager, an SOE-1 executive, and an executive at the Hong Kong conglomerate, the Asia Pacific GM provided frequent, detailed email updates to Gougarty and other Westport executives. Gougarty worked closely with and supervised the Asia Pacific GM during the negotiations from approximately June 2014 until his separation in April 2016.

10. Early in the negotiations, the Asia Pacific GM reported that he was told that the Government Official had a significant but undisclosed financial interest in the Chinese private equity fund that was to receive the JV shares from Westport and the Hong Kong conglomerate. He also reported that it was the Government Official's personal financial interest, not Chinese law, which was motivating the transfer of shares to the private equity fund. In an email dated June 20, 2014, the Asia Pacific GM reported to Gougarty that the Government Official "has [a] personal interest in the fund that [SOE-1] tries to bring in." In an email dated June 26, 2014, addressed to Gougarty and others, the Asia Pacific GM explained that the IPO was for the Government Official's "benefit, all he wants is a discount to the fund where he has interest."

11. The Government Official's personal interest became a central part of Westport's negotiation strategy. Gougarty recommended alternatives that included seeking a supply agreement in exchange for a transfer of shares to the private equity fund. No later than March 2015, Westport explicitly conditioned the share transfer on obtaining a long-term sales agreement. Having acknowledged Westport's position of "no component sales contract, no share transfer," Gougarty instructed Westport employees working for her on the transaction in March 2016 that the component supply agreement was a necessary element to complete the deal.

12. The negotiations progressed slowly as the Government Official and Westport disagreed on the share transfer price, a figure derived from the valuation of the joint venture. In March 2015, after meeting with executives at the private equity fund, the Asia Pacific GM reported that he was told that the Government Official was seeking a low valuation in order to “make quick and big money” outside the scrutiny of Chinese regulators. At the same time, Westport was seeking to maximize its value in order to alleviate its worsening finances and severe need for cash. However, as oil prices plummeted in 2014 and 2015, increasing the market for gasoline-powered car engines and reducing the market for Westport’s alternative fuel products, Westport became more willing to accept a lower valuation in order to close the deal and obtain the much-needed, albeit smaller, infusion of cash.

13. On June 29, 2015, Westport’s Board of Directors authorized Westport’s management to complete the negotiations and execute the share transfer. Gougarty did not disclose to the Board what the Asia Pacific GM had told her about the Government Official’s personal financial interest in the private equity fund or that the Government Official had requested a discount in the share transfer price. In fact, approximately nine months before obtaining the Board’s approval, Gougarty withheld this information from the Board, deleting a sentence in a September 2014 draft letter to the Board prepared by the Asia Pacific GM that described the proposed transfer. If Gougarty had not redacted the sentence, it would have reported to the Board that the Government Official had a financial interest in the Chinese private equity fund.

14. By early December 2015, Westport and the Government Official, negotiating through SOE-1 and the private equity fund, struck a deal. They agreed on a valuation of \$70 million for the JV, and Westport agreed to transfer shares to SOE-1 and the private equity fund in exchange for a long-term framework supply agreement and a cash dividend of 30% of undistributed profits--20% more than what was provided for under the joint venture agreement and more than Westport had received in the past. Westport also agreed, as Gougarty explained earlier in November 2015, that the public announcement of the deal would be limited to “talk[ing] about the transfer of share[s] to [SOE-1] and [an] unidentified Chinese company.”

15. In June 2016, Westport issued a revised Code of Conduct, which, like the earlier version that had been in effect since 2010, prohibited the payment of bribes to government officials, including transfers made indirectly through third parties. Gougarty reviewed the 2010 Code of Conduct when she began working at Westport, and she reviewed the new version in June 2016. She had also received training regarding the FCPA while working at another company prior to joining Westport.

16. While the Westport Code of Conduct prohibited the use of third parties to funnel bribes to government officials and it required that due diligence be conducted when retaining third parties to provide goods or services to Westport, both versions of the Code of Conduct were silent on the need to conduct due diligence when engaging in a business transaction with a third party in which a foreign government official may have a financial interest. Additionally, although Westport required anti-bribery clauses in contracts with vendors, there was no requirement that the company use such clauses when engaging in a business transaction such as a share transfer with entities that may be related to foreign government officials.

17. On August 20, 2016, Gougarty, by then Westport’s CEO, executed the share transfer agreements with the Chinese private equity fund and with SOE-1. That same day, the JV

and Westport entered into a framework supply agreement pursuant to which the JV eventually would purchase approximately \$500,000 of engine components from Westport. By separate resolution, executed on the same day, the JV authorized the distribution of a 30% dividend to all of the shareholders.

18. On September 29, 2016, as reflected in bank records maintained as source documents in Westport's files, the private equity fund wired a payment of approximately \$3 million to Westport's bank in Vancouver, Canada, from its bank in China through a correspondent bank in the United States. However, even though Westport's Key Accounting Control 3.1.1 required the comparison of source documents with journal entries, Westport's books and records accounting for the transaction falsely reflected the identity of the counterparty in the transaction as SOE-2, an entity related to SOE-1, rather than the true counterparty, the private equity fund.

19. In October 2016, Westport received approximately \$3.5 million, representing the increased dividend approved by the JV Board on August 20, 2016, the same day that Westport executed the share transfer agreements to the private equity fund and SOE-1. The \$3.5 million dividend was credited to Westport's bank account in Vancouver, Canada, having been sent from a bank in China through a correspondent bank in the United States.

20. On November 9, 2016, Westport furnished its Form 6-K with the Commission which, like Westport's books and records, falsely described the identity of the counterparty in the share transfer as SOE-2 instead of the Chinese private equity fund. Even though Westport's internal accounting Key Controls 6.2.1 and 6.2.2 purported to establish a process to reconcile public filings with source documents to provide reasonable assurance with respect to the accuracy and consistency of its filings, it failed to follow this process. As evidenced by her own misconduct, Gougarty as CEO failed to discharge her duty on behalf of Westport to devise and maintain a sufficient system of internal accounting controls.

21. On March 31, 2017, Westport filed a Form 40-F, its annual report, for the year ending December 31, 2016. The Management Discussion & Analysis ("MD&A") and financial statements attached to the Form 40-F falsely reported the identity of the counterparty in the share transfer as SOE-2 instead of the Chinese private equity fund. In connection with the filing of the Form 40-F, Gougarty executed a certification falsely attesting that Westport had disclosed all significant deficiencies and material weaknesses in the design and operation of its internal controls to the outside auditors. However, as Gougarty knew, she had failed to disclose to the outside auditors the deficiencies and weaknesses in the internal controls that she had exploited in carrying out an unlawful bribery scheme in circumvention of Westport's anti-bribery policies and its key accounting controls.

Legal Standards and Violations

22. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

23. As a result of the conduct described above, Westport and Gougarty violated Section 30A of the Exchange Act, which prohibits any issuer with a class of securities registered pursuant

to Section 12 of the Exchange Act, or any officer, director, employee, or agent acting on behalf of such issuer, in order to obtain or retain business, from corruptly giving or authorizing the giving of, anything of value to any foreign official for the purposes of influencing the official or inducing the official to act in violation of his or her lawful duties, or to secure any improper advantage, or to induce a foreign official to use his influence with a foreign governmental instrumentality to influence any act or decision of such government or instrumentality.

24. As a result of the conduct described above, Westport violated, and Gougarty caused Westport's violation of, Section 13(b)(2)(A) of the Exchange Act, which requires every issuer with a class of securities registered pursuant to Exchange Act Section 12 to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer.

25. As a result of the conduct described above, Westport violated, and Gougarty caused Westport's violation of, Section 13(b)(2)(B) of the Exchange Act which requires every issuer with a class of securities registered pursuant to Exchange Act Section 12 to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

26. As a result of the conduct described above, Gougarty knowingly violated Section 13(b)(5) of the Exchange Act, which provides that no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record or account, and Exchange Act Rule 13b2-1, which prohibits persons from directly or indirectly falsifying or causing to be falsified any book, record or account.

27. As a result of the conduct described above, Gougarty violated Exchange Act Rule 13a-14, which requires that a principal executive officer and a principal financial officer must certify in each annual report filed or submitted under Section 13(a) of the Exchange Act that he or she has reviewed the report and, among other things, disclosed to the issuer's auditors and the audit committee of the issuer's board of directors, all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information.

Westport's Remedial Efforts

28. In determining to accept Westport's Offer, the Commission considered remedial acts undertaken by Westport concerning its anti-corruption and financial reporting compliance programs, and its cooperation afforded the Commission staff.

29. During the course of the staff's investigation, Westport enhanced its anticorruption and compliance policies and training programs, and its disclosure policies and

controls. Westport enhanced its antibribery and anticorruption controls by adopting revised policies that, among other things, establish specific controls for transactions involving foreign government officials and entities, mandate due diligence for such transactions, and specifically require Westport's business partners to agree to abide by antibribery laws, including the FCPA.

30. Westport's cooperation included making foreign witnesses available for testimony at the Commission's Regional Office in Los Angeles and voluntarily producing additional requested documents.

Undertakings

31. Westport undertakes to:

(1) Report to the Commission staff periodically during a two-year term, the status of its remediation and implementation of compliance measures, particularly as to the areas of due diligence of third-party entities and persons, FCPA training and the testing of relevant controls including the collection and analysis of compliance data.

(2) During this period, should Westport discover credible evidence, not already reported to Commission staff, that questionable or corrupt payments or questionable or corrupt transfers of value may have been offered, promised, paid, or authorized by Westport, or any entity or person acting on behalf of Westport, or that related false books and records have been maintained, Westport shall promptly report such conduct to the Commission staff.

(3) During this two-year period, Westport shall: (1) conduct an initial review and submit an initial report and (2) conduct and prepare two follow-up reviews and reports, as described below:

a. Westport shall submit to the Commission staff a written report within 180 calendar days of the entry of this Order setting forth a complete description of its FCPA and anti-corruption related remediation efforts to date, its proposals reasonably designed to improve the policies and procedures of Westport for the purpose of compliance with the FCPA and other applicable anticorruption laws, and the parameters of the subsequent review (the "Initial Report").

b. The Initial Report shall be transmitted to Ansu N. Banerjee, Assistant Regional Director, United States Securities and Exchange Commission, 444 Flower St., Suite 900, Los Angeles, California 90071. Westport may extend the time period for issuance of the Initial Report with prior written approval of the Commission staff.

c. Westport shall undertake two follow-up reviews, incorporating any comments provided by the Commission staff on the previous report, to further monitor and assess whether the policies and procedures of Westport are reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws (the "Follow-Up Reports").

d. The Follow-up Report shall be completed by no later than 270 days after the Initial Report. The second Follow-up Report shall be completed by no later than 450 days after the completion of the Initial Report. Westport may extend the time period for issuance of the Follow-up Reports with prior written approval of the Commission staff.

e. The periodic reviews and reports submitted by Westport will likely include proprietary, financial, confidential, and competitive business information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain nonpublic, except (a) pursuant to court order, (b) as agreed by the parties in writing, (c) to the extent that the Commission staff determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (d) is otherwise required by law.

f. During this two-year period of review, Westport shall provide its external auditors with its annual internal audit plan and reports of the results of internal audit procedures and its assessment of its FCPA compliance policies and procedures.

g. During the two-year period of review, Westport shall provide Commission staff with any written reports or recommendations provided by Westport's external auditors in response to Westport's annual internal audit plan, reports of the results of internal audit procedures, and its assessment of its FCPA compliance policies and procedures.

(4) Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Westport agrees to provide such evidence. The certification and supporting material shall be submitted to Ansu N. Banerjee, Assistant Regional Director, United States Securities and Exchange Commission, 444 Flower St., Suite 900, Los Angeles, California 90071 no later than sixty (60) days from the date of the completion of the undertakings.

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 21C of the Exchange Act, Westport and Gougarty cease and desist from committing or causing any violations and any future violations of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. Pursuant to Section 21C of the Exchange Act, Gougarty cease and desist from committing or causing any violations and any future violations of Section 13(b)(5) of the Exchange Act and Rules 13a-14 and 13b2-1 thereunder.

C. Westport shall comply with the undertakings enumerated in paragraph 31, above.

D. Westport shall pay disgorgement of \$2,350,000, prejudgment interest of \$196,000 and civil penalties of \$1,500,000, to the Securities and Exchange Commission for a total payment of \$4,046,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. Payment shall be made in the following installments: \$2,023,000 within fourteen days of the entry of this Order, and four payments of \$505,750 each to be made within 90, 180, 270, and 362 days from the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 and pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Westport shall contact the staff of the Commission for the amount due. If Westport fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

E. Gougarty shall, within 10 days of the entry of this Order, pay a civil money penalty of \$120,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act.

F. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717 or SEC Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Westport or Gougarty 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 Charles Cain, Chief, FCPA Unit,

Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

G. 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 agree that in any Related Investor Action, they shall not argue that they 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' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree 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, the findings in this Order are true and admitted by Gougarty, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Gougarty 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 Gougarty 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.

Vanessa A. Countryman
Secretary