UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60413 / July 31, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13304

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
CENTREINVEST, INC.,	:	IMPOSING SANCTIONS BY DEFAULT
OOO CENTREINVEST SECURITIES,	:	AS TO CENTREINVEST, INC.,
VLADIMIR CHEKHOLKO,	:	DAN RAPOPORT, AND SVYATOSLAV
WILLIAM HERLYN,	:	YENIN
DAN RAPOPORT, AND	:	
SVYATOSLAV YENIN	:	

The Securities and Exchange Commission (Commission) issued its Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on December 8, 2008, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act).

On December 9, 2008, service of the OIP was made by certified mail to the most recent business address of CentreInvest, Inc. (CI-New York), a broker-dealer registered with the Commission.[1] See 17 C.F.R. §201.141(a)(2)(iii). On December 29, 2008, attorneys for Respondents Vladimir Chekholko (Chekholko) and William Herlyn (Herlyn) advised that each had accepted service of the OIP on behalf of their clients. See 17 C.F.R. § 201.141(a)(2)(i). By Order dated February 5, 2009, service of the OIP on OOO CentreInvest Securities (CI-Moscow), Dan Rapoport (Rapoport), and Svyatoslav Yenin (Yenin) was deemed effective as of January 8, 2009.[2]

The proceeding has been stayed as to Chekholko and Herlyn, pending Commission review of Offers of Settlement, and is still pending as to CI-Moscow, which filed its Answer on March 16, 2009. Rapoport and Yenin were ordered on February 5, 2009, to file their Answers to the OIP by March 2, 2009. As ordered on March 5, 2009, CI-New York was required to file its

[1] The OIP was returned to the Office of the Secretary by the United States Postal Service on February 19, 2009, with the notation that the addressee had moved and left no forwarding address.

[2] Rapoport and Yenin's attorney, Richard Kraut, Esq., subsequently filed a notice of withdrawal on February 18, 2009.

Answer to the OIP by March 31, 2009.[3] Rapoport, Yenin, and CI-New York have not filed Answers and did not attend either of the telephonic prehearing conferences held on April 28, 2009, and May 19, 2009.

On April 9, 2009, the Division of Enforcement (Division) filed a Motion for Default Judgments against Rapoport, Yenin, and CI-New York (Motion).[4] None of the three Respondents named in the Division's Motion have filed an opposition brief. See 17 C.F.R. § 201.154(b). Since Rapoport, Yenin, and CI-New York have not filed an Answer or an opposition to the Motion, have failed to attend prehearing conferences, and have failed to otherwise defend the proceeding, they are in default. See 17 C.F.R. §§ 201.155(a)(2), .220(f), .221(f). Accordingly, the following allegations of the OIP are deemed to be true as to them. See 17 C.F.R. § 201.155(a).[5]

FINDINGS OF FACT

CI-New York is a registered broker-dealer organized under the laws of New York State with its principal place of business in New York, New York. During the relevant period (2003 to 2007), it was a subsidiary of Cyprus-based Intelsa Investments Limited (Intelsa). CI-New York first registered with the Commission on June 23, 1998, and, during the relevant period, employed four to five full-time employees. On October 2, 2008, the Financial Industry Regulatory Authority, Inc. (FINRA), expelled CI-New York for failure to file a Financial and Operational Combined Uniform Single (FOCUS) report. (OIP at ¶3.)

CI-Moscow is a Moscow-based broker-dealer and limited liability company, specializing in the sale of second-tier Russian equities. During the relevant period, it was an affiliate of CI-New York. It was founded in 1992 under the laws of Russia and is regulated by the Russian Federal Financial Markets Service. CI-Moscow has never been registered with the Commission as a broker or dealer. (OIP at ¶2.)

Rapoport, forty years old, is a resident of Russia. He joined CI-Moscow in 1995. Rapoport relocated to New York and became a registered representative at CI-New York in January 1999. He served as CI-New York's managing director from January 2001 until November 2001. Rapoport apparently returned to CI-Moscow as a managing director in 2003 and was later promoted to executive director. While at CI-Moscow, Rapoport was responsible

[3] The motion of Richard Brodsky, Esq., to withdraw as CI-New York's attorney was granted by Order of March 26, 2009.

[4] The Motion was accompanied by a Memorandum in Support (Mem.) and a Declaration of June Reinerstein (Decl.) with three exhibits. Exhibit A is an earnings statement for Yenin for the year ending December 31, 2006; Exhibit B is a general ledger for CI-New York for 2007; and Exhibit C is a copy of emails from Yenin to Rapoport dated December 27, 2006, and January 31, 2007.

[5] Even though the proceeding is still pending as to CI-Moscow, pursuant to Commission's Rules of Practice, the allegations of the OIP relating to violations by CI-Moscow are taken as true where these allegations involve defaulting Respondents CI-New York, Rapoport, and Yenin. See 17 C.F.R. §201.155(a). Any findings relating to violations by CI-Moscow are not binding on CI-Moscow.

for the brokerage operations of both CI-Moscow and CI-New York. CI-Moscow terminated his employment in February 2008. During the relevant period, Rapoport held series 7, 24, and 63 licenses. (OIP at ¶6.)

Yenin, thirty-six years old, is a resident of Russia. In about July 2003, he became the managing director, chief financial officer, and financial and operations principal (FINOP) of CI-New York. After moving to Russia in early 2006, he continued to hold these positions until he left CI-New York in about November 2007. During the relevant period, Yenin held series 7, 24, 27, 62, 68, 82, and 87 licenses. (OIP at ¶7.)

From about 2003 until at least November 2007, CI-Moscow and Rapoport directly and indirectly solicited investors in the United States to purchase and sell thinly-traded stocks of Russian companies without registering as broker-dealers, as required by Section 15(a) of the Exchange Act, or meeting requirements for an exemption. (OIP at ¶1, 9.) Under Rapoport's direction, employees of CI-New York, including Yenin, regularly solicited U.S. institutional investors for the purchase and sale of Russian securities. (OIP at ¶10.) Investors who expressed interest in a transaction were referred to CI-Moscow to complete the transaction. Id. In some cases, Rapoport and other employees of CI-Moscow, who were not licensed to sell securities or registered as brokers or dealers under U.S. law, solicited U.S. investors directly. (OIP at ¶11.) Rapoport knew that any representative of CI-Moscow who solicited a U.S. investor would have to be licensed and registered with the Commission or an appropriate U.S. self-regulatory organization. (OIP at ¶14.)

In late 2003, Yenin learned from consultants to CI-New York that for CI-Moscow to qualify for an exemption from registration pursuant to Exchange Act Rule 15a-6(a), CI-New York had to maintain, among other things, required books and records relating to the transactions with U.S. investors, including those required by Exchange Act Rules 17a-3 and 17a-4. (OIP at ¶13.) CI-New York failed to maintain virtually any records concerning CI-Moscow's transactions with U.S. investors. (OIP at ¶12.)

Respondents Rapoport, Yenin, and CI-New York benefited financially from CI-Moscow's unlawfully solicited securities transactions with U.S. investors, which generated almost one million dollars of revenue in 2006 alone. (OIP at ¶16.)

Throughout the relevant period, CI-New York was under the control of CI-Moscow. In at least 2006 and 2007, CI-New York was also under the control of Rapoport. CI-Moscow and Rapoport supervised and directed the staff of CI-New York and controlled its budget and finances. CI-New York employees sometimes referred to Rapoport as their boss and to CI-Moscow as CI-New York's "parent broker-dealer." (OIP at ¶17.)

CI-New York filed its initial application of registration (Form BD) with the Commission on July 5, 1999, and subsequently filed numerous amendments.[6] (OIP at ¶18.) Form BD

[6] Official notice has been taken of the Commission's public official records concerning Respondents, pursuant to 17 C.F.R. § 201.323, including the filing of Form BD by CI-New York and amendments thereto.

amendments from October 1, 2003, through December 6, 2007, some of which were signed and filed by Yenin on behalf of CI-New York, failed to disclose CI-Moscow's and Rapoport's control of CI-New York. Id. At the time Yenin signed these Form BD amendments, he knew that CI-Moscow and Rapoport controlled CI-New York. (OIP at ¶19.)

In Form BD amendments, signed and filed by Yenin on behalf of CI-New York, the firm inaccurately responded "no" to the question: "Has any other regulatory agency, any state regulatory agency or foreign financial regulatory authority: . . . ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license or otherwise, by order, prevented it from associating with an investment-related business or restricted its activities?" (OIP at ¶20.) CI-New York should have answered "yes" to that question because the Cyprus Securities and Exchange Commission suspended the license of CI-New York's parent, Intelsa, on January 11, 2006, and revoked its license on May 26, 2006. (OIP at ¶8, 21.) At the time Yenin signed these Form BD amendments, he knew, or should have known, about the regulatory action against Intelsa and that Intelsa was a control affiliate of CI-New York. (OIP at ¶22.)

In response to requests by the Commission staff, CI-New York failed to produce many records, including many business-related emails sent or received by Yenin, as well as emails sent or received by other CI-New York corporate officers. (OIP at ¶23.) CI-New York either failed to maintain these emails or failed to produce them at the request of the Commission staff. (OIP at ¶24.) Yenin was responsible for CI-New York's record keeping, by virtue of his status as CI-New York's FINOP and under the terms of the firm's written supervisory procedures. (OIP at ¶25.) As such, Yenin knew, or should have known, of the firm's failure to maintain business-related emails. Id.

DISCUSSION

The OIP alleged that CI-Moscow and Rapoport willfully violated Section 15(a) of the Exchange Act, by illegally effecting transactions in securities without being registered with the Commission as a broker or being associated with a registered broker-dealer. (OIP at ¶27.) Further, Yenin and CI-New York are alleged to have willfully aided and abetted and caused CI-Moscow's violation. (OIP at ¶29.)

The OIP also alleged that CI-New York willfully violated Exchange Act Section 17(a) and Rule 15b3-1, by failing to disclose required information in its registration application with the Commission. (OIP at ¶32.) Additionally, Yenin is alleged to have willfully aided and abetted and caused CI-New York's violations of Exchange Act Section 17(a) and Rule 15b3-1. (OIP at ¶33.)

Finally, the OIP alleged that, as a result of CI-New York's failure to maintain and provide to the Commission certain required records, CI-New York willfully violated Exchange Act Section 17(a) and Rule 17a-4(b)(4) or, in the alternative, Rule 17a-4(j). (OIP at ¶35.) Again, Yenin allegedly, willfully aided and abetted and caused CI-New York's violations, in this instance, of Exchange Act Section 17(a) and Rule 17a-4(b)(4). (OIP at ¶36.)

Willfulness is shown where a person intends to commit an act that constitutes a violation; there is no requirement that the actor also be aware that he is violating any statutes or regulations. See, e.g., Wonsover v. SEC, 205 F.3d 408, 413-15 (D.C. Cir. 2000); Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

For an aiding and abetting violation of the federal securities laws, three elements are required: (1) an independent, primary securities law violation committed by some other party; (2) general awareness by the accused aider and abettor that his or her role was part of the overall activity that was improper or illegal; and (3) knowing and substantial assistance by the accused aider and abettor in the conduct that constitutes the violation. See Abraham & Sons Capital, Inc., 75 SEC Docket 1481, 1492 (July 31, 2001) (citing Graham v. SEC, 222 F.3d 994, 1000 (D.C. Cir. 2000)); see also SEC v. Fehn, 97 F.3d 1276, 1287-88 (9th Cir. 1996); The Rockies Fund, Inc., 81 SEC Docket 703, 729 n.63 (Oct. 2, 2003); Terence Michael Coxon, 80 SEC Docket 3288, 3300 n.32 (Aug. 21, 2003). In Howard v. SEC, the court found that there must be proof that the aider and abettor was aware or had knowledge of wrongdoing or, in the absence of knowledge, that the person had a state of mind close to conscious intent. See Howard, 376 F.3d 1136, 1142-43 (D.C. Cir. 2004) (citing Graham, 222 F.3d at 1006); see also Wonsover, 205 F.3d at 411.

Similarly, to "cause" a securities law violation (1) a primary violation must have occurred, (2) in which an act or omission of the respondent contributed, and (3) where the respondent knew, or should have known, that his conduct would contribute to the violation. Robert M. Fuller, 80 SEC Docket 3539, 3545 (Aug. 25, 2003) (citing Erik W. Chan, 77 SEC Docket 851, 859-60 (Apr. 4, 2002)). A finding that a person aided and abetted a violation necessarily makes the person a cause of that violation. See Zion Capital Mgmt., LLC., 57 S.E.C. 99, 116 (2003) (citing Sharon M. Graham, 53 S.E.C. 1072, 1085 n.35 (1998), aff'd, 222 F.3d 994 (D.C. Cir. 2000)).

A. Unregistered Broker-Dealers

As here relevant, Section 15(a) of the Exchange Act requires that any person selling securities must be registered with the Commission as a broker or dealer, or an associated person of a registered broker-dealer. Specifically, Exchange Act Section 15(a)(1) makes it illegal for a broker-dealer to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless such broker-dealer is registered with the Commission. Scienter is not an element of the violation. SEC v. Nat'l Exec. Planners, Ltd., 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

However, Exchange Act Rule 15a-6(a)(3) permits unregistered, foreign broker-dealers to effect transactions for U.S. institutional investors in certain limited circumstances. Even with this exception, the unregistered, foreign broker-dealers are subject to reporting, record keeping, and other requirements designed to ensure the protection of U.S. investors. See 17 C.F.R. § 240.15a-6(a)(3)(i). Exchange Act Rule 15a-6(b)(3) defines a foreign broker-dealer as "any non-U.S. resident person . . . that is not an office or branch of, or a natural person associated with, a registered broker[], whose securities activities, if conducted in the U.S., would be described by the definition of 'broker' or 'dealer.'"

A "broker" is defined as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4). A person may be found to be acting as a broker if he or she regularly participates in securities transactions "at key points in the chain of distribution." Mass. Fin. Servs., Inc. v. Sec. Investor Prot. Corp., 411 F. Supp. 411, 415 (D. Mass.), aff'd, 545 F.2d 754 (1st Cir. 1976). Generally, a "dealer" is defined as "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise." 15 U.S.C. § 78c(a)(5). An associated person of a broker-dealer "means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer." 15 U.S.C. § 78c(a)(18).

Rapoport was never registered with the Commission as a broker or dealer or associated with any broker-dealer registered in the United States. He regularly participated in securities transactions effected for various U.S. investors and utilized the instrumentalities of interstate commerce to do so. Rapoport directly and indirectly solicited investors in the United States, even though he was not associated with a registered broker-dealer and did not meet the requirements for an exemption. Therefore, Rapoport functioned as an unregistered broker and willfully violated Section 15(a)(1) of the Exchange Act.

CI-Moscow acted as an unregistered broker-dealer and was assisted in its violation of Exchange Act Section 15(a) by Yenin and CI-New York. Yenin, along with other employees of CI-New York, solicited U.S. investors and referred them to CI-Moscow in order to complete securities transactions in Russia. Yenin knew that CI-Moscow was not a registered broker-dealer and that it did not qualify for an exemption from registration. By repeatedly soliciting U.S. investors and referring them to CI-Moscow and its employees, knowing that CI-Moscow was not registered as a broker-dealer and did not qualify for an exemption from registration, Yenin and CI-New York aided and abetted and caused CI-Moscow's violation of Exchange Act Section 15(a).

B. Broker-Dealer Reporting Requirements

Exchange Act Section 15(b)(1) and Rule 15b3-1, in conjunction, require broker-dealers to file and keep current and accurate applications of registration (Form BD) with the Commission. Section 17(a) of the Exchange Act requires registered broker-dealers "to make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate," and Form BD is such a prescribed report.

Form BD requires registered broker-dealers to disclose whether any person not identified as an owner or officer of the broker-dealer "directly or indirectly [has] control [over] the management or policies of the [broker-dealer] through agreement or otherwise." Alderman v. SEC, 104 F.3d 285, 287 n.1 (9th Cir. 1997). "[T]he correct disclosure of the . . . controlling persons of an applicant is more than a 'minor' point, indeed it is most important to the proper administration of the [Exchange] Act." Capital Funds, Inc., v. SEC, 348 F.2d 582, 588 (8th Cir. 1968). Form BD also requires registered broker-dealers to disclose if any foreign financial

regulatory authority has "ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license or otherwise, by order, prevented it from associating with an investment-related business or restricted its activities."

CI-New York failed to disclose in amendments to its Form BD that it was controlled by CI-Moscow and Rapoport and that the broker-dealer license of its parent, Intelsa, had been suspended in January 2006 and revoked in May 2006 by the Cyprus Securities and Exchange Commission. Accordingly, CI-New York willfully violated Exchange Act Rule 15b3-1, as alleged in the OIP. At the time he signed the inaccurate Form BD amendments, Yenin knew that CI-Moscow and Rapoport controlled CI-New York. By signing the Form BD amendments on CI-New York's behalf, Yenin willfully aided and abetted and caused CI-New York's violation of Exchange Act Rule 15b3-1.

C. Maintenance of Broker-Dealer Records

Exchange Act Section 17(a)(1) requires registered broker-dealers to make, keep, and furnish accurate books and records. Of these required records, Exchange Act Rule 17a-4(b)(4) requires that every registered broker-dealer maintain copies of all business-related communications. The Commission has stated that internal e-mails relating to a broker-dealer's "business as such" fall within the purview of Rule 17a-4. Reporting Requirements for Brokers or Dealers, Exchange Act Release No. 38245, 63 SEC Docket 2298, 2301 (Feb. 5, 1997).

Relatedly, under Exchange Act Rule 17a-4(j), broker-dealers are required to "furnish promptly" to representatives of the Commission copies of records required to be preserved under Exchange Act Section 17(a), as requested by those representatives. The Commission has made clear that it is of "overriding importance" that broker-dealers comply with the requests of regulatory authorities during investigations. See Wedbush Secs., Inc., 48 S.E.C. 963, 971-72 (1988).

CI-New York failed to preserve emails and failed to produce requested emails to the Commission staff as required. Accordingly, CI-New York willfully violated Exchange Act Section 17(a)(1) and Exchange Act Rules 17a-4(b)(4) and 17a-4(j). Yenin, as FINOP, and in accordance with CI-New York's written supervisory procedures, was responsible for CI-New York's record keeping. See Gilad J. Gevaryahu, 51 S.E.C. 710, 712-713 (1993). By failing to maintain CI-New York's emails, Yenin aided and abetted and caused CI-New York's violation of Exchange Act Section 17(a)(1) and Rule 17a-4(b)(4).

SANCTIONS

A. Cease-and-Desist Orders

Section 21C(a) of the Exchange Act authorizes the Commission to 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 rules thereunder. The Commission may also impose a cease-and-desist order against any 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." 15 U.S.C.

§ 78u-3(a). The Division requests that CI-New York be ordered to cease and desist from committing or causing violations of Exchange Act Sections 15(a) and 17(a) and Rules 15b3-1, 17a-4(b)(4), and 17a-4(j); that Rapoport be ordered to cease and desist from committing violations of Exchange Act Section 15(a); and that Yenin be ordered to cease and desist from committing or causing violations of Exchange Act Sections 15(a) and 17(a) and Rules 15b3-1 and 17a-4(b)(4). (Mem. at 12-15.)

In KPMG, the Commission addressed the standard for issuing cease-and-desist relief. KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1183-92 (2001). It explained that the Division must show some risk of future violations; however, it also ruled that such a showing should be "significantly less than that required for an injunction" and that, "absent evidence to the contrary," a single past violation ordinarily suffices to raise a sufficient risk of future violations. Id. at 1185, 1191.

Along with the risk of future violations, the Commission considers the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the respondent's opportunity to commit future violations. Id. at 1192. In addition, the Commission considers whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceeding. Id. The Commission weighs these factors in light of the entire record, and no one factor is dispositive.

Addressing these factors here, CI-New York willfully violated Exchange Act Section 17(a) and Rules 15b3-1, 17a-4(b)(4), and 17a-4(j) by filing inaccurate Form BD amendments and by failing to preserve and produce required emails. It also aided and abetted and caused CI-Moscow's violations of Exchange Act Section 15(a) by soliciting U.S. investors on behalf of CI-Moscow. CI-New York's conduct was recurring and it has failed to recognize the wrongful nature of the conduct. Although CI-New York appears to have ceased operations, it remains registered as a broker-dealer with the Commission and could commit future violations of the securities laws.

Rapoport's conduct in violating Exchange Act Section 15(a) by directly soliciting U.S. investors and directing CI-New York to repeatedly solicit U.S. investors without qualifying for Rule 15a-6(a) exemptions was willful and recurring. Given his failure to respond in this proceeding, Rapoport has not provided any assurance against future violations or recognized the wrongful nature of his conduct. As his actions described above demonstrate, he is in a position to commit future violations despite his residence abroad.

Yenin aided and abetted and caused CI-Moscow's violations of Exchange Act Section 15(a) by soliciting U.S. investors and referring them to CI-Moscow knowing that it was not registered as a broker-dealer with the Commission. Yenin also aided and abetted and caused CI-New York's violations of Exchange Act Section 17(a) and Rules 15b3-1 and 17a-4(b)(4) when Yenin signed inaccurate Form BD amendments on behalf of CI-New York and failed to maintain CI-New York's emails. His conduct allowed multiple violations of the Exchange Act by CI-

Moscow and CI-New York to occur that were recurrent over an extended period. Like Rapoport, Yenin has failed to respond in this proceeding and, thus, has failed to recognize the wrongful nature of his conduct or to provide any assurances against future violation. He is in a position to commit future violations.

Based upon the discussion above, it is in the public interest to issue cease-and-desist orders against CI-New York, Rapoport, and Yenin.

B. Associational Bars, Revocation of Registration

The Division seeks sanctions under Section 15(b) of the Exchange Act against CI-New York, Rapoport, and Yenin. (Mem. at 18-19.)

Sections 15(b)(4)(D) and 15(b)(6)(A)(i) of the Exchange Act empower the Commission to impose sanctions against broker-dealers or persons associated with broker-dealers if either have willfully violated, as here relevant, the Exchange Act or rules thereunder. Specifically, the Commission may censure, place limitations on the activities or functions of, suspend for a period not exceeding twelve months, bar from association, or revoke the registration a broker-dealer or associated person. 15 U.S.C. §§ 78o(b)(4), (b)(6)(A). The Commission must find, on the record and after notice and opportunity for hearing, that such sanctions are in the public interest. Id.

The public interest analysis requires that several factors be considered, including: the egregiousness of the respondent's actions; the isolated or recurrent nature of the infractions; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his or her conduct; and the likelihood that his or her occupation will present opportunities for future violations. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963.) However, such sanctions are not intended to punish a respondent but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

The public interest factors listed above are almost identical to those used in determining the appropriateness of issuing a cease-and-desist order. Accordingly, it is also in the public interest to bar Rapoport and Yenin from association with any broker or dealer and to revoke the broker-dealer registration of CI-New York.

C. Accounting and Disgorgement

Pursuant to Sections 21B(e) and 21C(e) of the Exchange Act, the Division seeks orders requiring disgorgement plus prejudgment interest of ill-gotten gains that were obtained by CI-New York and Yenin. (Mem. at 15-17.) As it has been unable to identify ill-gotten gains obtained by Rapoport, the Division requests that he be required to provide an accounting, setting forth all of his income relating to CI-New York and CI-Moscow. (Mem. at 17.)

1. Accountings

Sections 21B(e) and 21C(e) of the Exchange Act permit the Commission to order an accounting. In order to determine the amounts of ill-gotten gains and effectuate disgorgement, it is sometimes necessary to first order an accounting. See, SEC v. Scott, 565 F. Supp. 1513, 1537 (S.D.N.Y. 1983). The Division is not "required to show that it cannot obtain all necessary information through usual discovery methods" in order to seek an accounting. SEC v. College Bound, Inc., 849 F.Supp. 65, 66 n.1 (D.D.C. 1994).

The Division has not been able to obtain information concerning CI-New York's ill-gotten gains outside of 2006. (Mem. at 17 n.6.) The Division also notes that it has not been able to obtain information concerning Yenin's ill-gotten gains outside of the January 2006 to March 2007 period. Id. Despite this noted inability to uncover ill-gotten gains during the remainder of the relevant period, the Division did not request an accounting be ordered against these Respondents for these unaccounted periods. Furthermore, the combination of disgorgement and civil penalties, addressed below, are sufficient both to deprive CI-New York and Yenin of gains flowing from their violations and to provide financial disincentive to engage in securities law violations.

In contrast, the Division requests that Rapoport be ordered to produce an accounting because it has been unable to obtain any information concerning his ill-gotten gains during any of the relevant period. (Mem. at 17.) It is clearly appropriate in light of the violations discussed above and the disgorgements imposed upon CI-New York and Yenin that Rapoport also be ordered to disgorge his ill-gotten gains from his part of the violative solicitation of U.S. investors. Despite Rapoport's residency abroad, courts have recognized that they "can order [an overseas] person to perform an accounting the purpose of which is to identify assets subject to disgorgement." SEC v. International Swiss Investments Corp., 895 F.2d 1272, 1276 (9th Cir. 1990). As Rapoport has not cooperated in providing the Division information concerning these gains, Rapoport will be ordered to provide the Division with an accounting setting forth all his income relating to CI-New York and CI-Moscow during the relevant period.

2. Disgorgement

Sections 21B(e) and 21C(e) authorize disgorgement in any administrative proceeding in which a civil monetary penalty could be imposed or a cease-and-desist order is sought, such as this proceeding. Disgorgement is described as "an equitable remedy designed to deprive [wrongdoers] of all gains flowing from their wrong . . . [and] to deter violations by making them unprofitable." SEC v. AMX, Int'l, Inc., 872 F. Supp. 1541, 1544 (N.D. Tex. 1994)(citations omitted); accord. SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1474 (2d Cir. 1996); SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989). "[D]isgorgement need only be a reasonable approximation of profits causally connected to the violation." Id. at 1231.

Once the Division shows that its disgorgement figure reasonably approximates the amount of unjust enrichment, the burden of going forward shifts to the respondent to demonstrate clearly that the Division's disgorgement figure is not a reasonable approximation. See SEC v. Lorin, 76 F.3d 458, 462 (2d Cir. 1996); SEC v. Patel, 61 F.3d 137, 140 (2d Cir.

1995). Any risk of uncertainty as to the disgorgement amount falls on the wrongdoer whose illegal conduct created the uncertainty. See First City, 890 F.2d at 1232.

The Division has provided evidence showing that CI-New York had a total net income of $441,972 for the year 2006 as of December 27, 2006. (Mem. at 16; Decl. at 2, Ex. C.) Since all of CI-New York's business was related to the solicitation and referral of U.S. investors to CI-Moscow (the violative conduct at issue here), the Division requests that CI-New York be required to disgorge its entire net income. (Mem. at 16-17.) The Division's calculation of CI-New York's ill-gotten gains is a reasonable approximation of profit generated through CI-New York's violative conduct, and CI-New York will be ordered to disgorge $441,972.

The Division has provided evidence showing that Yenin was paid $68,034.36 by CI-New York for the period January 1, 2006, to March 31, 2007, and it requests that Yenin be required to disgorge his entire salary. (Mem. at 16-17; Decl. at 1-2, Exs. A, B.) See Rita J. McConville, 85 SEC Docket 3127, 3151 n. 64 (June 30, 2005) (noting that disgorgement of salary within Commission discretion), petition for rev. denied, 465 F.3d 780 (7th Cir. 2006), reh'g denied, 2007 U.S. App. LEXIS 926 (7th Cir. 2007), cert. denied, 128 S. Ct. 48 (2007); cf. CFTC v. British Am. Commodity Options Corp., 788 F.2d 92, 93-94 (2d Cir. 1986) (disgorgement of all income earned while engaged in the options trading business without registering as a futures commission merchant in violation of CFTC regulations). The Division's calculation of Yenin's ill-gotten gains, during the January 2006 through March 2007 period, is a reasonable approximation of profits from his violative conduct, and Yenin will be ordered to disgorge $68,034.36.

3. Prejudgment Interest

Exchange Act Sections 21B(e) and 21C(e) also provide that the Commission may order "reasonable interest" be paid on any disgorged funds. These statutory provisions also authorize the Commission to adopt rules and regulations and issue orders concerning rates of interest and periods of accrual, which it has done through Commission Rule of Practice 600. 17 C.F.R. §201.600. Under this Rule, "[p]rejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement." 17 C.F.R. §201.600(a).

CI-New York and Yenin will be required to pay interest on the disgorgement discussed above from January 1, 2007, and April 1, 2007, respectively, computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly. See 17 C.F.R. §201.600.

D. Civil Monetary Penalties

An order of disgorgement (even with prejudgment interest) merely requires the return of wrongfully obtained profits. Disgorgement does not result in any actual economic penalty or act as a financial disincentive to engage in securities law violations. See SEC v. Moran, 944 F. Supp. 286, 296 (S.D.N.Y. 1996). As such, the Commission is authorized to impose a civil, monetary penalty if a respondent has willfully violated or willfully aided and abetted or willfully caused any violations of the Exchange Act or rules thereunder. See 15 U.S.C. §§ 78u-2(a)(1)-

(3). Exchange Act Section 21B(b) sets out three tiers of maximum penalties for "each [violative] act or omission." 15 U.S.C. §78u-2(b). The Division requests the imposition of a second-tier penalty up to the maximum amount for each defaulting Respondent. (Mem. 17-18.)

For a second-tier penalty, the act or omission must have "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." 15 U.S.C. §78u-2(b)(2). The adjusted statutory maximum amount is not an overall limitation, but a limitation per violative action. See Mark David Anderson, 56 S.E.C. 840, 863 (Aug. 15, 2003) (imposing a civil penalty of $1,000 for each of the respondent's ninety-six violative trades); see also Maria T. Giesige, Exchange Act Release No. 60000, 2009 SEC LEXIS 1756, *31 & n.24 (May 29, 2009) (discussing the appropriateness of assessing penalties on a per customer harmed basis); John A. Carley, 92 SEC Docket 1693, 1739-40 & n.157 (Jan. 31, 2008) (imposing one maximum $110,000 civil penalty based on the totality of the misconduct, but noting that each unregistered sale could be considered a separate violation); David Henry Disraeli, 92 SEC Docket 852, 881 (Dec. 21, 2007) (imposing a civil penalty in an amount approximating the unjust enrichment); Phlo Corporation, 90 SEC Docket 1089, 1113-14 & n.85 (Mar. 30, 2007) (imposing second-tier penalties of $25,000 for each month of aiding and abetting the company's violations of the federal securities rules).

While the Division references that second-tier penalty amounts of $65,000 for individual persons and $325,000 for corporations may be assessed for violations occurring after February 14, 2005,[7] it gives no indication as to the number of violations it believes CI-New York, Rapoport, and Yenin committed in the course of the improper solicitation of U.S. investors, occurring over the course of five years. Further, it should be noted that the maximum penalty for violations occurring from 2003 to February 2005 was only $60,000 and $300,000 for individuals and corporations, respectively. As such, it is necessary to determine how to appropriately parse up the violations committed by CI-New York, Rapoport, and Yenin; whether to treat the entire course of conduct as a single act or as a series of acts, as to which multiple penalties would be appropriate.

In this case, the actions of the defaulting Respondents demonstrate deliberate or reckless disregard of regulatory requirements. Accordingly, it is appropriate that each of the defaulting Respondents shall pay a second-tier penalty. The penalty for CI-New York shall be $1,575,000, reflecting the maximum, second-tier penalties of $300,000 to be assessed for the conduct that occurred in years 2003 and 2004 and $325,000 to be assessed for that of years 2005, 2006, and 2007. By similar methodology and applying the relevant maximums of $60,000 and $65,000, for the respective years, Rapoport and Yenin shall be ordered to pay a total of $555,000 each. These amounts are also approximately commensurate with the annual amount of unjust enrichment received by CI-New York and Yenin discussed previously in the assessment of disgorgement.

[7] As required by the Debt Collection Improvement Act of 1996, the Commission has periodically increased the maximum penalty amounts for violations. See 17 C.F.R. §§ 201.1001, .1002, .1003, .1004. The figures provided by the Division reflect the adjustment for violations occurring from February 15, 2005, to March 3, 2009. See 17 C.F.R. § 201.1003. Because the underlying misconduct occurred between 2003 and November 2007, the adjusted maximum penalty amounts in 17 C.F.R. §§ 201.1002 and .1003 govern here.

ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED, pursuant to Section 21C of the Securities Exchange Act of 1934, that CentreInvest, Inc., cease and desist from committing or causing any violations, or any future violations, of Sections 15(a) and 17(a) and Rules 15b3-1, 17a-4(b)(4), and 17a-4(j) of the Securities Exchange Act of 1934;

IT IS FURTHER ORDERED, pursuant to Section 21C of the Securities Exchange Act of 1934, that Dan Rapoport cease and desist from committing or causing any violations, or any future violations, of Section 15(a) of the Securities Exchange Act of 1934;

IT IS FURTHER ORDERED, pursuant to Section 21C of the Securities Exchange Act of 1934, that Svyatoslav Yenin cease and desist from committing or causing any violations, or any future violations, of Sections 15(a) and 17(a) and Rules 15b3-1 and 17a-4(b)(4) of the Securities Exchange Act of 1934;

IT IS FURTHER ORDERED, pursuant to Sections 21B and 21C of the Securities Exchange Act of 1934, that CentreInvest, Inc., shall disgorge $441,972 plus prejudgment interest from January 1, 2007, computed as set forth in Rule 600 of the Commission's Rules of Practice, 17 C.F.R. § 201.600(b);

IT IS FURTHER ORDERED, pursuant to Sections 21B and 21C of the Securities Exchange Act of 1934, that Dan Rapoport shall provide the Division with an accounting, setting forth all of his income relating to CI-New York and CI-Moscow;

IT IS FURTHER ORDERED, pursuant to Sections 21B and 21C of the Securities Exchange Act of 1934, that Svyatoslav Yenin shall disgorge $68,034.36 plus prejudgment interest from April 1, 2007, computed as set forth in Rule 600 of the Commission's Rules of Practice, 17 C.F.R. § 201.600(b);

IT IS FURTHER ORDERED, pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934, that the broker-dealer registration of CentreInvest, Inc., is revoked;

IT IS FURTHER ORDERED, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that Dan Rapoport and Svyatoslav Yenin are barred from association with any broker or dealer;

IT IS FURTHER ORDERED, pursuant to Section 21B(e) of the Securities Exchange Act of 1934, that CentreInvest, Inc., shall pay a civil monetary penalty of $1,575,000 and that Dan Rapoport and Svyatoslov Yenin shall each pay a civil monetary penalty of $555,000.

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Robert G. Mahony
Administrative Law Judge