INITIAL DECISION RELEASE NO. 387
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13304

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	
CENTREINVEST, INC.,	:	INITIAL DECISION AS TO
OOO CENTREINVEST SECURITIES,	:	OOO CENTREINVEST SECURITIES
VLADIMIR CHEKHOLKO,	:	August 31, 2009
WILLIAM HERLYN,	:	
DAN RAPOPORT, AND	:	
SVYATOSLAV YENIN	:	

APPEARANCES: Leslie Kazon, James E. Burt IV, Paul G. Gizzi, and Daniel R. Marcus for the Division of Enforcement, Securities and Exchange Commission

OOO CentreInvest Securities, pro se[1]

BEFORE: Robert G. Mahony, Administrative Law Judge

BACKGROUND

The Securities and Exchange Commission (Commission) issued its Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act) (OIP) on December 8, 2008. The OIP alleges that, for several years, OOO CentreInvest Securities (CI-Moscow or Respondent), a Moscow-based, unregistered broker-dealer, directly and through its New York affiliate, CentreInvest, Inc. (CI-New York), and other persons working for CI-Moscow and/or CI-New York, solicited institutional investors in the U.S. to purchase and sell thinly traded stocks of Russian companies, without registering as a broker-dealer as required by Section 15(a) of the Exchange Act or

[1] Respondent OOO CentreInvest Securities was represented by Richard Brodsky, Esq. (Brodsky), when the proceeding commenced and through the filing of Respondent's Answer. Subsequently, Brodsky submitted a motion to withdraw as counsel noting that Respondent had failed to adequately cooperate with or pay Brodsky. The motion to withdraw was granted by Order of April 24, 2009, and no alternate counsel has replaced him.

meeting the requirements for exemption from registration for foreign broker-dealers under Exchange Act Rule 15a-6(a).[2] The Division of Enforcement (Division) made its documents available for inspection by CI-Moscow on December 17, 2008. See 17 C.F.R. § 201.230. CI-Moscow filed its Answer to the OIP on March 16, 2009.

Following a prehearing conference held on April 28, 2009, an order was issued the next day, allowing the Division to file a Motion for Summary Disposition (Motion) against CI-Moscow. The April 29, 2009, Order also allowed CI-Moscow until July 10, 2009, to file any opposition to the Division's Motion. On June 5, 2009, the Division filed its Motion; CI-Moscow did not file any opposition.

STANDARDS FOR SUMMARY DISPOSITION

Commission Rule of Practice 250(a) provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP. See 17 C.F.R. § 201.250(a). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Commission Rule of Practice 323. Id. The hearing officer is required promptly to grant or deny the motion or to defer decision on the motion. See 17 C.F.R. § 201.250(b). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. Id.

In assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party. See Felix v. N.Y. City Transit Auth., 324 F.3d 102, 104 (2d Cir. 2003); O'Shea v. Yellow Tech. Svcs., Inc., 185 F.3d 1093, 1096 (10th Cir. 1999); Cooperman v. Individual, Inc., 171 F.3d 43, 46 (1st Cir. 1999). By analogy to Rule 56 of the Federal Rules of Civil Procedure, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon the mere allegations or denials of its pleadings. At the summary disposition stage, the hearing officer's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. See Anderson, 477 U.S. at 249.

FINDINGS OF FACT

The findings and conclusions in this Initial Decision are based on the entire record, which consists of the OIP; all filed pleadings, including CI-Moscow's Answer, motions, uncontested

[2] The proceeding has ended as to the other captioned Respondents. CentreInvest, Inc., Exchange Act Release Nos. 60413 (July 31, 2009), 60450 (Aug. 5, 2009), and 60485 (Aug. 12, 2009).

affidavits, and attached exhibits; orders; and the transcripts of prehearing conferences.[3] Based on this record, the Division has established the following undisputed material facts.

A. Organization of CI-Moscow and CI-New York

CI-Moscow is a Russian business entity that is regulated by the Russian Federal Financial Markets Service. (Answer at 1.) Founded in 1992, CI-Moscow operates as a broker-dealer division of CentreInvest Group (CIG). (Decl. Ex. E at 1, 3, 5; Chekholko Aff. Ex. E.) Among other securities-related activities, CI-Moscow executes trades in second tier, or "local," Russian stocks. (Chekholko Aff. Ex. E; Herlyn Aff. Ex. K.) CI-Moscow has never been registered with the Commission as a securities broker-dealer. (Answer at 1.)

CI-New York is a registered broker-dealer[4] organized under the laws of the State of New York with its principal place of business in New York, New York. (Answer at 1.) Svyatoslav Yenin (Yenin) was CI-New York's Chief Financial Officer (CFO), Financial Operations Principal (FINOP), and Managing Director. (Decl. at ¶ 2, Ex. B at 3.)[5] From May 2004 until March 2008, Vladmir Chekholko (Chekholko) was CI-New York's Director of Equity Sales & Trading. (Chekholko Aff. at ¶ 3.) William Herlyn (Herlyn) was an independent contractor for CI-New York from 2003 to June 2006, at which time, he became an employee of CI-New York and its Chief Compliance Officer. (Herlyn Aff. at ¶ 3.)

Rather than registering directly with the Commission or establishing a "chaperoning" relationship with a registered broker-dealer,[6] CI-Moscow elected to utilize CI-New York in order to initiate its solicitation of U.S. institutional investors. (Herlyn Aff. Ex. A.) In June 2003, CI-New York entered into a consulting agreement with Capital Markets Compliance, L.L.C. (CMC), a firm providing advice and assistance regarding regulatory rules and filings. (Decl. Ex.

---

[3] References to CI-Moscow's Answer will be cited as "(Answer at ___.)". The Division's Motion for Summary Disposition, its Memorandum of Law in Support, and the Declaration of Daniel R. Marcus will be cited as "(Mot. at ___.)," "(Mem. at ___.)," and "(Decl. at ___.)," respectively. The Division's June 5, 2009, submissions of Affidavits will be cited as follows: from CI-Moscow customers John T. Connor "(Connor Aff. at ___.)," John V. Doyle "(Doyle Aff. at ___.)," and Katalin Osvath Gingold "(Gingold Aff. at ___.)," and from Respondents Vladimir Chekholko "(Chekholko Aff. at ___.)" and William Herlyn "(Herlyn Aff. at ___.)". Any Exhibits contained in the declaration or various affidavits will be cited by the respective document and "(Ex. ___.)".

[4] CI-New York has been registered with the Commission since 1997. See, CentreInvest, Inc., Uniform Application for Broker-Dealer Registration (Form BD) (Dec. 15, 1997). Official notice, pursuant to 17 C.F.R. § 201.323, is taken of this and all other filings made by CI-New York with the Commission.

[5] Exhibit B of the Declaration of Daniel R. Marcus is a certified copy of CI-New York's Amendment to Form BD, filed with the Commission on October 1, 2003.

[6] See 17 C.F.R. §§ 240.15a-6(a)(3)(ii)(A) and (a)(3)(iii)(B); cf. Exemption of Certain Foreign Brokers or Dealers, Exchange Act Release No. 58047, 73 Fed. Reg. 39,182, 39,184 & n.36 (June 27, 2008) (proposing to amend Exchange Act Rule 15a-6 to update and expand the scope of certain exemptions for foreign entities).

A.) With the recognized purpose of utilizing CI-New York as a conduit for CI-Moscow sales, Yenin contacted CMC in early December 2003 to get information on the reporting, registration, and licensing requirements involved with utilizing foreign persons associated with an unregistered, foreign broker-dealer to solicit sales of foreign securities to U.S. institutional investors. (Herlyn Aff. Ex. B.) CMC explicitly advised Yenin that unregistered, foreign associates could not solicit U.S. institutional investors, that a foreign broker-dealer, soliciting and executing transactions with U.S. institutional investors would need to be registered with the Commission, and that extensive records would be required of transactions generated through use of CI-New York as an intermediary. (Herlyn Aff. Exs. B, C.)

Until at least February 2008, CIG owned, among other subsidiaries, Intelsa Investments Limited which, in turn, owned CI-New York. (Decl. Ex. E at 5.) Despite these intermediaries between CI-Moscow and CI-New York, CI-Moscow acted as and was represented to be the parent of CI-New York. (Chekholko Aff. at ¶ 5, Ex. E; Herlyn Aff. at ¶ 10, Ex. A.) Dan Rapoport (Rapoport) was the Deputy General Director of CI-Moscow from February 3, 2004, until his dismissal on April 2, 2008. (Answer at 2.) Rapoport represented himself as "Managing Director" of "CentreInvest Securities" located in Moscow. (Decl. Exs. C, D; Chekholko Aff. at ¶ 9, Exs. A, N, R, S; Herlyn Aff. Exs. H-J, L; Gingold Aff. Ex. C.) Rapoport exercised considerable oversight of CI-New York, including budget approval, distribution of sales leads, and direction of sales staff. (Decl. Ex. C; Chekholko Aff. at ¶¶ 9-11, 25-27, 34, Exs. A, B, N, R; Herlyn Aff. Exs. H-L.) Additionally, Rapoport made hiring decisions with regard to the CI-New York staff and held pre-hire meetings with prospective employees in Russia, and the CI-New York sales considered him their "boss." (Decl. Ex. C; Chekholko Aff. at ¶¶ 4, 9, 34, Ex. S.)

B. Solicitation of U.S. Institutional Investors

By at least 2004, CI-New York's representatives began soliciting U.S. institutional investors on behalf of CI-Moscow.[7] (Chekholko Aff. at ¶¶ 5-6; Herlyn Aff. at ¶¶ 10-11.) In late 2006, CI-New York added two additional employees, Rebecca Baldridge (Baldridge) and Pavel Pribylovsky (Pribylovsky), to solicit U.S. institutional investors. (Decl. Ex. C at 7; Chekholko Aff. at ¶ 8.) CI-New York's solicitation activities on behalf of CI-Moscow included placing "cold calls" and sending emails to potential customers. (Chekholko Aff. at ¶¶ 7, 10-13, Exs. C-J, O; Herlyn Aff. at ¶¶ 12-13, Ex. D; Doyle Aff. at ¶¶ 5-6, Ex. B; Gingold Aff. at ¶ 5, Ex. A.) In the course of email solicitations to U.S. institutional investors, CI-Moscow and CI-New York employees distributed securities research reports published by CIG. (Chekholko Aff. at ¶¶ 7, 12, Exs. C-G, O; Herlyn Aff. at ¶ 13, Ex. D; Doyle Aff. at ¶¶ 5-6, Ex. B; Gingold Aff. at ¶ 5, Ex. A.)

[7] In CI-New York's reports to the Commission going back as early as 1999, the company is described as "an introducing broker with respect to domestic and certain foreign securities transactions and clears Russian securities transactions through facilities provided by the Parent." CentreInvest, Inc., Annual Audited Report (Form X-17A-5), at 7 (Aug. 31, 1999). Similar language is found in all of CI-New York's Forms X-17A-5, with its most recent report modifying the language to describe CI-New York as "an introducing broker for its Parent with respect to domestic and certain foreign securities transactions." CentreInvest, Inc., Annual Audited Report (Form X-17A-5), at 10 (Aug. 27, 2007).

Rapoport would also generate lists of potential customers from those parties who had viewed CIG research reports at websites such as Thomson Financial and Bloomberg. (Herlyn Aff. at ¶¶ 22-23, Exs. I-J.) He would distribute these and other potential customer lists to the sales staffs at CI-New York and CI-Moscow, who would, in turn, "cold call" the parties listed. (Chekholko Aff. at ¶ 10, Exs. A, R; Herlyn Aff. at ¶¶ 22-23, Exs. I-J.) At one point in 2007, Baldridge and Pribylovsky each had prospective customer lists of over one hundred entities. (Chekholko Aff. at ¶10, Ex. A.) Rapoport's control over the "cold calling" process also extended to the pre-approval of the scripts utilized by the sales staffs during their "cold call" solicitations. (Herlyn Aff. at ¶ 24, Ex. K.) Rapoport required that Chekholko and Herlyn make a minimum number of calls per week, he instructed them not to leave voice mail messages, and he had them prepare and submit to him written records of their "cold call" solicitations. (Chekholko Aff. at ¶ 11, Ex. B.)

Rapoport and other CI-Moscow employees also sent "Buy/Sell" lists to the sales staffs of CI-New York and CI-Moscow containing Russian securities in which CI-Moscow was looking to trade. (Chekholko Aff. at ¶ 26, Ex. N; Herlyn Aff. at ¶¶ 19-21, Exs. G-H, L.) Both sales staffs were encouraged to solicit investors to execute transactions in these listed securities. (Chekholko Aff. at ¶ 26, Ex. N; Herlyn Aff. at ¶ 21, Exs. H, L.) Prior to the recommendation of the securities on the "Buy/Sell" list by the sales staffs, Rapoport required pre-approval of the potential customers that would be solicited. (Chekholko Aff. at ¶¶ 26-27, Ex. N; Herlyn Aff. at ¶ 25, Ex. L.) On one such occasion in November 2006, Chekholko requested to recommend shares of Gazprom Geofizkia (a security in which Rapoport was encouraging trading) to Doyle, one of his current customers who was a portfolio manager and investment adviser for several investment entities at Wexford Capital (Wexford).[8] (Chekholko Aff. at ¶ 27, Ex. N.) Later that same day, after receiving Rapoport's approval to solicit Doyle, Chekholko sent an email solicitation, including a CIG research report, to Doyle. (Chekholko Aff. at ¶¶ 27-28, Exs. N-O; Doyle Aff. at ¶¶ 5-6, Ex. B.) As a result of this solicitation, Doyle caused one of the Wexford entities to purchase shares of Gazprom Geofizkia. (Doyle Aff. at ¶¶ 4, 6, Ex. A.) As with all CI-New York solicitations, the purchase of the Gazprom Geofizkia shares was executed by CI-Moscow, which added a "dealer mark-up" to the execution price. (Chekholko Aff. at ¶ 14; Herlyn Aff. at ¶¶ 14-15; Doyle Aff. at ¶ 6.) However, no commission was paid by Wexford to CI-New York or CI-Moscow. (Chekholko Aff. at ¶ 14; Herlyn Aff. at ¶ 14; Doyle Aff. at ¶ 6.)

Not only did Rapoport, a foreign associate of an unregistered, foreign broker-dealer, supervise and direct the solicitation efforts of the CI-New York staff, but he also directly solicited U.S. institutional investors and allowed his staff in Russia to solicit these investors as well. (Decl. at ¶ 6, Ex. D; Chekholko Aff. at ¶¶ 9, 31-33, Ex. R; Connor Aff. at ¶¶ 6-8; Gingold Aff. at ¶ 8, Ex. C.) In fact, Connor, the fund manager of the Third Millennium Russia Fund (Third Millennium) and a CI-Moscow customer since 2002, was not solicited by a CI-New York employee until 2006, when contacted by Baldridge.[9] (Connor Aff. at ¶¶ 2, 4, 9, Ex. A.) Prior to

[8] Doyle had completed his first securities purchase for a Wexford entity with CI-New York, executed by CI-Moscow, earlier that month. (Doyle Aff. at ¶ 4, Ex. A.)

[9] Even though Connor was first contacted by Baldridge for CI-New York in late 2006, it was not until August 2007 that he caused Third Millennium to purchase any securities solicited by CI-New York employees. (Connor Aff. at ¶ 10, Ex. A.) In that instance, Third Millennium

the contact by Baldridge, Connor had received solicitations directly from a CI-Moscow employee and had conducted securities transactions with CI-Moscow based on those solicitations. (Connor Aff. at ¶¶ 6-8.) When Chekholko was hired, he was expressly told not to solicit certain U.S. institutional investors because they were already being solicited by CI-Moscow employees. (Chekholko Aff. at ¶ 32.) On at least one occasion, Chekholko expressed concern to Rapoport about CI-Moscow associates contacting U.S. investors, especially with regard to the regulatory implications of such contact. (Chekholko Aff. at ¶ 33, Ex. R.)

As noted above with the securities purchase by Wexford, when a securities transaction was solicited only through CI-New York employees, it was still CI-Moscow that handled all aspects of the execution of the securities transaction. (Chekholko Aff. at ¶¶ 14, 30, Exs. P-Q; Herlyn Aff. at ¶¶ 14-15, 17-18; Connor Aff. at ¶ 10; Doyle Aff. at ¶¶ 6-8, Ex. C; Gingold Aff. at ¶¶ 9, 11, Ex. D.)

In 2007, Gingold, an investment portfolio manager with Artio Global Management LLC (Artio), was solicited by Chekholko by email to purchase shares in Chelyabinsk Industrial Bank (or Chelindbank), which was at that time not listed on a public securities exchange. (Chekholko Aff. ¶¶ 18-19; Gingold Aff. at ¶¶ 1, 4-5, Ex. A.) The solicitation included a CIG research report. (Gingold Aff. at ¶ 5, Ex. A.) Chekholko had solicited Gingold on prior occasions by sending her emails. (Chekholko Aff. Ex. J.) As Gingold inquired further about the Chelindbank offering, Chekholko directed her to Rapoport. (Gingold Aff. at ¶¶ 6-8, Exs. B-C.) Gingold eventually caused Artio to purchase shares in Chelindbank, and the sale was executed by CI-Moscow. (Chekholko Aff. at ¶¶ 18-20, Exs. K-L; Gingold Aff. at ¶¶ 4, 9, Ex. D.) A confirmation of the transaction was faxed to Gingold; despite representations on the fax that it was "[f]rom" Chekholko, it was actually sent from Russia by an employee of CI-Moscow. (Chekholko Aff. at ¶ 19, Ex. L; Gingold Aff. at ¶ 9, Ex. D.) Like Wexford, Artio paid no commission on the transaction. (Gingold Aff. at ¶¶ 10-11.) It only paid a "dealer mark-up" to CI-Moscow that was included in the per share price of the Chelindbank shares. (Chekholko Aff. at ¶ 20; Gingold Aff. at ¶¶ 10-11.)

Doyle had another Wexford entity purchase shares of Mashinostroiteniy in April 2007 after solicitation by Chekholko. (Chekholko Aff. at ¶ 29, Ex. Q; Doyle Aff. at ¶ 7, Ex. A.) Once Doyle agreed to the purchase, Chelholko sent an email notice to CI-Moscow of the sale in order to begin execution and provided CI-Moscow with contact information for Doyle for transmission of the trade confirmation. (Chekholko Aff. at ¶ 30, Ex. Q.) CI-Moscow employees subsequently communicated directly with Wexford back office employees responsible for the clearing and settlement of securities transactions in order to complete the transaction, including obtaining wire transfer accounts from Wexford and sending various payment instructions and signed confirmations. (Chekholko Aff. at ¶ 30, Ex. P; Doyle Aff. at ¶ 8, Ex. C.) As with all other securities transactions solicited by CI-New York, CI-New York did not maintain order tickets or confirmations relating to this transaction, or maintain custody of the securities involved. (Chekholko Aff. at ¶¶ 14, 30; Herlyn Aff. at ¶¶ 14, 17.) The price per share of the

---

purchased shares of Mostotrest solicited by Pribylovsky. (Chekholko Aff. at ¶ 22, Ex. K; Connor Aff. at ¶ 10, Ex. A.) However, the actual execution and settlement of the transaction was still handled by CI-Moscow. (Id.)

Mashinostroiteniy securities purchased also included the "dealer mark-up" for CI-Moscow. (Chekholko Aff. at ¶ 30; Doyle Aff. at ¶ 7.)

Similarly, the various transactions Connor initiated for Third Millennium were all executed by CI-Moscow, with a "dealer mark-up" included in the per share prices of the securities purchased or sold. (Chekholko Aff. at ¶ 22; Connor Aff. at ¶¶ 5, 10.)

C. Revenues from U.S. Solicitations

Yenin, CFO and FINOP of CI-New York, closely monitored the number of transactions and the amount of revenue generated by the sales staff at CI-New York for CI-Moscow. (Decl. at ¶ 2, Exs. B at 3, C; Chekholko Aff. at ¶ 35.) Sales staff that successfully solicited transactions for CI-Moscow earned increased compensation. (Chekholko Aff. at ¶ 36; Herlyn Aff. at ¶ 15.) For instance, Chekholko's sales efforts from February through October 2006 resulted in his receiving bonuses totaling $86,423. (Decl. Ex. C at 7, 9-10.)

The uncontested affidavit of Chekholko estimates that CI-Moscow earned revenues of at least $2,400,000 from 2004 to 2007 from transactions generated as a result of the solicitations initiated by CI-New York sales staff. (Chekholko Aff. at ¶¶ 38-41.) Chekholko derived this estimation based on the payments he received and the compensation structure set-up by CI-Moscow for these transactions. (Chekholko Aff. at ¶¶ 36-37.) The reasonableness of Chekholko's estimation is substantiated by emails between Yenin and Rapoport acknowledging annual revenue of $928,454 through December 27, 2006, as compared to the estimation that CI-New York's sales efforts generated revenue of approximately $1,000,000 for CI-Moscow in 2006. (Decl. Ex. C at 6; Chekholko Aff. at ¶ 40.)

D. Maintenance of Required Records

Despite receiving notice from CMC in 2003 that federal securities regulations required CI-New York to maintain certain records of transactions involving CI-Moscow, no such records were maintained by CI-New York. (Chekholko Aff. at ¶¶ 14, 17, Ex. K; Herlyn Aff. at ¶¶ 8, 14, 17-18, Exs. C, E.) In April 2007, the Commission began a broker-dealer examination of CI-New York, during which it requested documents and posed questions regarding CI-New York's operations. (Decl. at ¶¶ 6-7, Ex. E; Herlyn Aff. at ¶¶ 16-17, Ex. E.) CI-New York's production of documents and replies to questions lasted until at least February 2008. (Id.) One type of document requested by the Commission examination staff was trade tickets, a record that CMC had informed Yenin was required to be maintained. (Herlyn Aff. at ¶ 16, Exs. C, E.) In October 2007, Herlyn provided the Commission examination staff with the requested trade tickets; however, he first had to contact an oversees affiliate of CI-Moscow to obtain them. (Herlyn Aff. at ¶¶ 16-17, Ex. E.) The trade tickets provided to the Commission staff, which included the Artio purchase of Chelindbank shares and the Third Millennium purchase of Mostotrest shares, were primarily written in Russian. (Chekholko Aff. at ¶¶ 16-18, 22, Ex. K; Herlyn Aff. Ex. E.)

As a result of the 2007 Commission examination, Herlyn advised Chekholko to begin maintaining a list of all transactions that resulted from Chekholko's solicitations of U.S. institutional investors. (Chekholko Aff. at ¶ 23.) In documents titled "Customer Order Ticket,"

Chekholko listed transactions executed in October and November 2007, including a purchase of shares of Priargunsky (PGHO) for Wexford. (Chekholko Aff. Ex. M; Herlyn Aff. Ex. F; Doyle Aff. Ex. A.) Notwithstanding the title of these documents, none of the "Tickets" were provided to any of the customers referenced within them. (Chekholko Aff. at ¶ 24.) Order confirmations were sent by CI-Moscow. (Id.) All of the trade tickets, order confirmations, and custody of the securities referenced in the "Tickets" were maintained by CI-Moscow, and all transmissions of funds related to the transactions were handled by CI-Moscow. (Chekholko Aff. at ¶ 24; Herlyn Aff. at ¶ 18.)

CONCLUSIONS OF LAW

The OIP alleged that CI-Moscow willfully violated Section 15(a) of the Exchange Act, by acting as a broker effecting transactions in, and inducing or attempting to induce the purchase or sale of, any security without being registered with the Commission. (OIP at ¶ 27.)

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 & n.5 (2d Cir. 1976). "A firm . . . can act only through its agents, and is accountable for the actions of its responsible officers." A.J. White & Co. v. SEC, 556 F.2d 619, 624 (1st Cir. 1977) (citing Armstrong, Jones & Co. v. SEC, 421 F.2d 359 (6th Cir. 1970)); see also S.E.C. v. Tome, 638 F.Supp. 596, 643 (S.D.N.Y. 1986); SEC v. Mgmt Dynamics, Inc., 515 F.2d 801, 812 (2d Cir.1975).

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. Specifically, Exchange Act Section 15(a)(1) makes it illegal for a broker 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 is registered with the Commission. A "broker" is "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). 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). Scienter is not an element of the violation. See SEC v. Nat'l Exec. Planners, Ltd., 503 F. Supp. 1066, 1073 (M.D.N.C. 1980) (citations omitted). From the facts above, it is clear that CI-Moscow was not registered with the Commission and CI-Moscow did make use of telephone, email, and wire transfers when it solicited and executed securities transactions with U.S. institutional investors.

However, Exchange Act Rule 15a-6(a) exempts a foreign broker from the registration requirements where that foreign broker's business involving U.S. investors falls into one of three categories.[10] See 17 C.F.R. § 240.15a-6(a). First, a foreign broker can be exempt from the

[10] Exchange Act Rule 15a-6(b)(3) defines a foreign broker as "any non-U.S. resident person . . . that is not an office or branch of, or a natural person associated with, a registered broker . . .,

registration requirements if it only effects unsolicited transactions with U.S. investors. See 17 C.F.R. § 240.15a-6(a)(1). Secondly, a foreign broker may furnish research reports to U.S. institutional investors who then proceed to effect transactions in the securities that are the subjects of the reports, subject to several requirements.[11] See 17 C.F.R. § 240.15a-6(a)(2). Finally, an unregistered, foreign broker is permitted to solicit U.S. institutional investors in certain limited circumstances, where, among other requirements, the foreign broker executes the resulting transactions through a registered broker, and it provides the Commission with any requested documents or information. See 17 C.F.R. § 240.15a-6(a)(3)(i). Further, Exchange Act Rule 15a-6(a)(3) requires that the foreign broker's associated persons conduct all solicitations from outside the U.S. or are chaperoned by an associated person of the registered broker.[12] See 17 C.F.R. § 240.15a-6(a)(3)(ii)(A).

CI-Moscow did not argue in its Answer, as required by Commission Rules of Practice, the affirmative defense that it is exempt from registration in the United States as a broker or dealer pursuant to Exchange Act Rule 15a-6(a). See 17 C.F.R. §201.220(c). However, if it had, the uncontested affidavits of CI-Moscow customers and CI-New York employees, submitted by the Division, establish that CI-Moscow did not follow the various requirements contained in the exemptions afforded under Exchange Act Rule 15a-6(a).

CI-Moscow solicited and executed transactions with U.S. institutional investors which eliminates the use of the exemption provided by Exchange Act Rule 15a-6(a)(1). CI-Moscow initiated follow-up with U.S. institutional investors who had been sent CIG research reports, executed transactions with investors receiving these reports rather than having a registered broker execute the transactions, and directly received payment for these transactions through the

---

whose securities activities, if conducted in the United States, would be described by the definition of 'broker.'" 17 C.F.R. § 240.15a-6(b)(3).

[11] The second exemption adds the further requirements that the reports cannot recommend use of the foreign broker, the foreign broker cannot initiate follow-up contact or otherwise attempt to induce the investors who received the reports, the foreign broker must execute the transaction through a registered broker with whom it has a relationship, and the foreign broker cannot have an express or implied agreement to direct commission income to the foreign broker. See 17 C.F.R. § 240.15a-6(a)(2)(i)-(iv).

[12] The exemption under Exchange Act Rule 15a-6(a)(3) also places several requirements upon the registered broker through which the unregistered, foreign broker executes transactions. The registered broker must, for instance, issue all required confirmations and statements, maintain all required records, and receive, deliver, and safe-guard all funds and securities connected with the transactions. See 17 C.F.R. § 240.15a-6(a)(3)(iii)(A)(1)-(2), (4), (6). The registered broker is also required to determine that the foreign broker's associates should not be disqualified from acting as associated persons by reason of prior statutory violations, expulsions or suspensions from the industry, convictions relating to securities or for other fraudulent acts, and the like. See 17 C.F.R. § 240.15a-6(a)(3)(ii)(B). In relation to these foreign associates, the registered broker must maintain a record of the types of information specified in Exchange Act Rule l7a-3(a)(12) about the foreign associates, must maintain consents from the foreign associates regarding service of process, and must make this and other required records available to the Commission upon request. See 17 C.F.R. § 240.15a-6(a)(3)(iii)(C)-(E).

mark-up in per share price of the effected securities, all in violation of the requirements of the exemption under Exchange Act Rule 15a-6(a)(2).

While CI-Moscow's actions most closely approximate the exemption provided under Exchange Act Rule 15a-6(a)(3), it failed to follow the requirements for this exemption and failed to ensure that CI-New York, which it controlled, followed the record-keeping requirements to allow CI-Moscow to qualify for this exemption. Further, this exemption requires the unregistered, foreign broker to provide information upon request from the Commission, which CI-Moscow has failed to do. See 17 C.F.R. § 240.15a-6(a)(3)(iii)(A)(4). Despite knowledge of the statutory requirements necessary to qualify for exemption from registration as evidenced by the letters from CMC to Yenin, required records were not kept nor provided to the Commission, and securities transactions were executed by, confirmations sent by, and monies and securities kept in the custody of CI-Moscow, not CI-New York.

CI-Moscow acted as an unregistered broker in violation of Exchange Act Section 15(a). CI-Moscow was not a registered broker, and it did not qualify for an exemption from registration. The Division has provided undisputed evidence that, by at least 2004, CI-Moscow directed CI-New York and its employees to solicit U.S. institutional investors and refer them to CI-Moscow in order to complete securities transactions in Russia; that CI-Moscow directly solicited and executed transactions with U.S. institutional investors; and that in doing so, CI-Moscow violated Exchange Act Section 15(a).

SANCTIONS

This proceeding was instituted pursuant to Sections 15(b) and 21C of the Exchange Act. Under these sections, the Commission is authorized to sanction violators of the federal securities laws through such means as a bar from association with any broker or dealer, the assessments of disgorgement and civil money penalties, requiring an accounting of ill-gotten gains, and/or an order to cease-and-desist from violative conduct. The undisputed facts establish that CI-Moscow acted as an unregistered broker-dealer in violation of Section 15(a) of Exchange Act. These undisputed facts support the Division's Motion and no further proceedings are necessary.

A. Cease-and-Desist Order

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. The Division requests that CI-Moscow be ordered to cease and desist from committing violations of Section 15(a) of the Exchange Act. (Mem. at 16-17.)

In KPMG Peat Marwick LLP, the Commission addressed the standard for issuing cease-and-desist relief, explaining that the Division must show some risk of future violations. 54 S.E.C. 1135, 1183-92 (2001). 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. Id.

Addressing these factors here, the proven violations were serious and recurrent. They also involved the deliberate disregard of regulatory requirements. CI-Moscow's conduct in violating Exchange Act Section 15(a) by directly soliciting U.S. institutional investors and directing CI-New York to repeatedly solicit U.S. institutional investors without qualifying for Exchange Act Rule 15a-6(a) exemptions was willful and recurring. CI-Moscow has offered no assurances against future violations or recognized the wrongful nature of its conduct. The violations are fairly recent, having ceased approximately twenty-one months ago. See Robert W. Armstrong, III, 85 SEC Docket 3011, 3040 (June 24, 2005) (imposing a cease-and-desist order against a respondent for misconduct that ended ten years earlier). While the Division has not presented evidence of harm to specific investors, the Commission has noted that the broker-dealer registration requirement serves as the "keystone of the entire system of broker-dealer regulation," and CI-Moscow's intentional disregard for this requirement "deprive[s] the public of protection [to which] it is entitled." Eugene T. Ichinose, Jr., 21 SEC Docket 970, 975 (Dec. 16, 1980). Therefore, a cease-and-desist order is appropriate.

B. Associational Bar

The Division seeks sanctions under Section 15(b)(6) of the Exchange Act against CI-Moscow. (Mem. at 17-18.) Exchange Act Section 15(b)(6)(A)(i), in conjunction with Exchange Act Section 15(b)(4)(D), empowers the Commission to impose sanctions against persons associated with brokers if such persons willfully violated, as here relevant, the Exchange Act or rules thereunder.[13] Specifically, the Commission may censure an associated person, place limitations on the activities or functions of that person, suspend that person for a period not exceeding twelve months, or bar that person from being associated with a broker or dealer. See 15 U.S.C. § 78o(b)(6)(A). The Commission must find, on the record and after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is 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

[13] The term "person" as used with in the Exchange Act "means a natural person, company, government, or political subdivision, agency, or instrumentality of a government." 15 U.S.C. § 78c(a)(9).

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, 1281 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 a cease-and-desist order. Accordingly, it is also in the public interest to bar CI-Moscow from association with any broker or dealer.

C. Accounting and Disgorgement

Pursuant to Sections 21B(e) and 21C(e) of the Exchange Act, the Division seeks orders requiring an accounting and disgorgement, plus prejudgment interest, of all ill-gotten gains earned by CI-Moscow as a result of its violative conduct in the unregistered solicitation and execution of securities transactions with U.S. institutional investors. (Mem. at 18-20.)

1. Accounting

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 represents that it has been unable to quantify the total amount of CI-Moscow's ill-gotten gains owing to CI-Moscow's failure to cooperate with the Division in providing any documents or information concerning its activities in the U.S. during the relevant period. (Mem. at 19-20.) Accordingly, the Division requests that CI-Moscow should be required to provide an accounting, setting forth all proceeds obtained as a result of the transactions executed involving U.S. institutional investors during the relevant period, as well as any compensation received for those transactions. (Mem. at 20.)

While CI-Moscow has not cooperated in providing the Division information concerning these gains, the Division was able to provide sufficient evidence that it had a reasonable approximation of CI-Moscow's ill-gotten profits, which CI-Moscow did not oppose. Given the disgorgement ordered below, an accounting is unnecessary.

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 and internal quotations 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." First City, 890 F.2d 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); First City, 890 F.2d at 1232. 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 (citations omitted).

The Division requests that CI-Moscow be required to disgorge the $2,400,000 in revenues estimated by Chekholko to have been earned by CI-Moscow from 2004 through 2007 as a result of the violative solicitations of and transactions with U.S. investors, plus prejudgment interest. (Mem. at 20.) The Division's calculation of CI-Moscow's ill-gotten gains is a reasonable approximation of profits earned by CI-Moscow and CI-Moscow will be ordered to disgorge $2,400,000.

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. See 17 C.F.R. §201.600. The Division calculates prejudgment interest on the $2,400,000 disgorgement discussed above at $222,254.68, computed as set forth in Commission Rule of Practice 600(b) from November 15, 2007. (Decl. at ¶ 8, Ex. F.) This prejudgment interest amount shall be awarded.

D. Civil Monetary Penalties

An order of disgorgement merely requires the return of wrongfully obtained profits and, therefore, 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 civil money penalties if a respondent has willfully violated the Exchange Act, or the 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 of $325,000 for each violation by CI-Moscow. (Mem. at 21.)

The three-tier system provided in Exchange Act Section 21B(b) specifies that for each "act or omission" by a corporation, the adjusted maximum amount of a penalty in the first tier is

$65,000; in the second tier, it is $325,000; in the third tier, it is $650,000.[14] 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 Commission also must find that a monetary penalty is in the public interest. Six factors are relevant to the public interest determination: fraud, deceit, manipulation, or the deliberate or reckless disregard of a regulatory requirement; harm to others; unjust enrichment; prior violations; deterrence; and such other factors as justice may require. See 15 U.S.C. § 78u-2(c). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." Robert G. Weeks, 76 SEC Docket 2609, 2671 (ALJ Feb. 4, 2002), aff'd sub nom. David A. Hesterman, 78 SEC Docket 2313 (Oct. 22, 2002).

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 (2003) (imposing a civil penalty 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); 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 for each month during which the company's violations of the federal securities rules occurred).

While the Division notes that a penalty of $325,000 may be assessed for each violation and that CI-Moscow's actions were repeated, it gives no indication as to the number of violations it believes CI-Moscow committed in the course of its unregistered solicitation of U.S. institutional investors. (Mem. at 21.) Further, it should be noted that the maximum penalty that can be assessed for CI-Moscow's violations that occurred from 2004 to February 14, 2005, is only $300,000. See 17 C.F.R. § 201.1002. As such, it is necessary to determine whether to treat CI-Moscow's entire course of conduct as a single act or as a series of acts for which multiple penalties would be appropriate.

In this case, the actions of CI-Moscow demonstrate deliberate disregard of regulatory requirements beginning in at least 2004 and continuing for several years. CI-Moscow and persons it controlled knew of the regulatory requirements to solicit U.S. investors without registering with the Commission, and CI-Moscow flagrantly ignored and did not follow these requirements. It is to the disadvantage of all involved in the securities markets to allow deliberate disregard for regulations to go unpenalized. CI-Moscow generated millions of dollars in revenues from its actions that circumvented federal securities laws, and, as such, it is in the public interest that it be penalized for its conduct. Accordingly, it is appropriate that CI-Moscow

[14] This reflects the adjustment for violations occurring from February 15, 2005, to March 3, 2009. See 17 C.F.R. § 201.1003. 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. Because CI-Moscow's proven underlying misconduct occurred between 2004 and November 2007, the adjusted maximum penalty amounts in 17 C.F.R. §§ 201.1002 and .1003 govern here.

shall pay a second-tier penalty. Commensurate with penalties ordered against the other Respondents to this proceeding, the penalty for CI-Moscow shall be $1,275,000, reflecting the maximum, second-tier penalties of $300,000 to be assessed for the conduct that occurred in 2004 and $325,000 to be assessed for that of years 2005, 2006, and 2007.

ORDER

Based on the findings and conclusions stated:

The Division's Motion for Summary Disposition is GRANTED;

IT IS ORDERED, pursuant to Section 21C of the Securities Exchange Act of 1934, that OOO CentreInvest Securities 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 15(b)(6) of the Securities Exchange Act of 1934, that OOO CentreInvest Securities is barred from association with any broker or dealer;

IT IS FURTHER ORDERED, pursuant to Sections 21B and 21C of the Securities Exchange Act of 1934, that OOO CentreInvest Securities shall disgorge $2,400,000 plus prejudgment interest of $222,254.68; and

IT IS FURTHER ORDERED, pursuant to Section 21B(e) of the Securities Exchange Act of 1934, that OOO CentreInvest Securities shall pay a civil monetary penalty of $1,275,000.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

_____

Robert G. Mahony
Administrative Law Judge