SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Rel. No. 8679 / April 14, 2006

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 53654 / April 14, 2006

Admin. Proc. File No. 3-11247

In the Matter of

VLADLEN "LARRY" VINDMAN

OPINION OF THE COMMISSION

PENNY STOCK BAR PROCEEDING

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Antifraud violations

Penny stock promoter engaged in scheme to inflate artificially the demand for and price of penny stock of issuer in violation of antifraud provisions of federal securities laws. Held, it is in the public interest to impose a penny stock bar, cease-and-desist order, and civil money penalty.

APPEARANCES:

Jerome M. Selvers and John A. Rentschler, of Sonnenblick, Parker & Selvers, P.C., for Vladlen "Larry" Vindman.

Alix Biel and Howard S. Kim, for the Division of Enforcement.

Appeal filed: June 14, 2005
Last brief received: April 7, 2006
Oral argument: January 30, 2006

I.

Vladlen "Larry" Vindman ("Vindman" or "Respondent"), a penny stock promoter, and the Division of Enforcement each appeal from the decision of an administrative law judge. The law judge found that between late July and early September 2003, Vindman engaged in a scheme to inflate artificially the demand for and price of the stock of Marx Toys & Entertainment Corp. 1/ This scheme, the law judge found, involved Vindman's own trading and Vindman's orchestration of the trading of a "network" of associates, as well as attempts to gain the assistance of two registered representatives of a broker-dealer in buying Marx stock and soliciting their customers to buy Marx stock. The law judge found that Vindman, through his involvement in this scheme, willfully violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. 2/ The law judge barred Vindman from participating in an offering of penny stock and ordered him to cease and desist from committing or causing violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5. Vindman appeals from the law judge's findings of violation and imposition of sanctions. The Division appeals the law judge's order that Vindman pay a third-tier civil money penalty of $20,000, rather than the larger sum sought by the Division. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal. 3/

II.

Around 1999, Vladlen "Larry" Vindman became interested in the financial markets and became a day trader. Through Internet chat rooms, Vindman became acquainted with other day traders. These traders included Cal Massaro, a resident of Connecticut; Fred Nader, a resident of Texas; and William Brantley, a resident of Arizona. Through Brantley, Vindman became acquainted with Max Bevins, also a resident of Arizona, another day trader.

1/ The name of the company originally incorporated as stereoscape.com, inc. was changed to Marx Toys & Entertainment Corp. on March 11, 2003. "Marx" will be used to refer to both Marx Toys & Entertainment Corp. and the predecessor entity. The acts on which the charges against Vindman are based all occurred after March 11, 2003.

2/ 15 U.S.C. §§ 77q, 78j(b); 17 C.F.R. § 240.10b-5.

3/ Rule of Practice 451(d), 17 C.F.R. § 201.451(d), permits a member of the Commission who was not present at oral argument to participate in the decision of the proceeding if that member has reviewed the oral argument transcript prior to such participation. Chairman Cox, who was not present at the oral argument, performed the requisite review.

In late 2000 or early 2001, Vindman began working as a stock promoter for companies to whom he was referred by friends or acquaintances whom he knew through Internet chat rooms. These companies included Datameg Corp., Rocky Mountain Energy Corp., and Enviro-Energy Corporation. Vindman described the services he provided as

> just getting exposure for the company, maybe getting on a website to give it more investors to have a look at it, maybe doing an e-mail. Not myself. I knew people that would do e-mail for a company, little stuff like that. You know, just word of mouth, let people know what this company is all about.

In late 2002, Steven Wise, chief executive officer of Marx, contacted Vindman. 4/ Josh Weinfeld, an Internet acquaintance of Vindman, had referred Wise to Vindman, because Weinfeld thought Vindman could assist in promoting and marketing Marx's stock. 5/ Marx had been incorporated in 1988 as a corporate shell. When Wise first contacted Vindman, Marx had only one employee, Wise, and little if any revenue. Moreover, audited financial statements attached to Marx's Form 10-KSB for the year ended December 31, 2002 contained a "going concern" qualification, noting that Marx's net loss of $1,369,432 and working capital deficiency of approximately $1,255,982 "raise[d] substantial doubt about the Company's ability to continue as a going concern." Despite these less than promising prospects, Marx hoped for future success through the development and marketing of IM Buddies, a product developed by United Internet Technologies, Inc. ("UIT"). IM Buddies were plush toys in the form of cartoon characters that could be attached to computers and would read incoming instant messages in a voice appropriate to the particular cartoon character.

According to Vindman, in early 2003, he decided that IM Buddies was a sufficiently attractive product to make involvement with Marx a promising opportunity, so he agreed with Wise that he would provide services to Marx for one year in exchange for three million shares of Marx stock. 6/ Vindman testified that, at the time he and Wise reached their agreement, the price of Marx stock was two or three cents per share. In March 2003, Vindman received 1.5

4/ Wise was named as a respondent in the Order Instituting Proceedings in this matter. Without admitting or denying the findings, he consented to the entry of an order imposing a penny stock bar, an officer and director bar, an order to cease and desist from committing or causing any violation or future violation of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5, and a civil penalty totaling $75,000, part of which was payable in installments. See Steven Wise, Securities Exchange Act Rel. No. 51077 (Jan. 25, 2005), 84 SEC Docket 2719, 2721-22.

5/ Vindman later learned that Weinfeld had helped Wise acquire Marx and that Wise had compensated Weinfeld by giving him stock in Marx.

6/ In his brief, Vindman states that he accepted stock because Marx had no money. He did not explain how Marx could develop or market IM Buddies with no money, little or no revenue, and a single employee.

million shares of Marx common stock pursuant to this oral agreement. Vindman testified that when he received these shares, the price per share was about five cents. 7/ Marx and UIT signed a licensing contract for IM Buddies on April 1, 2003.

Although Vindman had discussions with Wise in 2002 and received 1.5 million shares of Marx stock in March, and although the licensing agreement between Marx and UIT was signed on April 1, Vindman testified that he did not begin "providing services" to Marx under his agreement with Wise until July 2003. Instead, during early 2003, Vindman and a number of his Internet acquaintances were trading in stock of other companies that Vindman was promoting. In February 2003, Nader, Brantley, and Progress, Vindman's Belize corporation, all traded in Enviro-Energy. In February and March 2003, Vindman, Progress, Massaro, Nader, and Brantley all traded in Rocky Mountain Energy. In March and June 2003, Vindman, Progress, Nader, Brantley, and Bevins all traded in Datameg. Vindman was in frequent contact with Massaro, Nader, and Brantley. During the summer of 2003, Vindman testified that he spoke with Massaro two or three times a week. Vindman also stated that he communicated with Nader and Brantley on most trading days, usually by instant message. 8/

Vindman received an additional 500,000 shares of Marx common stock, valued at approximately $100,000, in July. 9/ Nader received from Weinfeld 100,000 shares of Marx common stock on July 22, 2003. Massaro also received 100,000 shares of Marx common stock from Weinfeld, on July 24, 2003. Massaro testified that Vindman arranged for Massaro to get the stock and that the shares were deposited in a brokerage account set up for that purpose at Vindman's request, in exchange for Massaro's assistance in what Massaro described as "bring[ing] marketing awareness" to Marx by "call[ing] up several friends and see[ing] if they were interested in investing" in Marx. Vindman's description of the services that he provided to Marx was equally vague: he testified that he "multi-tasked everything," providing "basic full faceted" services, and doing "a little bit of everything" for Marx. Although he was supposed to provide promotional services for Marx, Vindman testified that he reviewed Marx's press releases solely for grammar and spelling.

At around the time that Vindman received his second free allotment of Marx shares and Massaro and Nader each received 100,000 Marx shares from Weinfeld, Vindman and his

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7/ An account statement shows that Vindman received the shares on March 3, 2003. The closing price for Marx shares on the following day was 6 cents per share. These shares were transferred to an offshore account in Belize, maintained in the name of Progress, Inc. ("Progress"), a Belize corporation incorporated by Vindman.

8/ Vindman had little direct contact with Bevins, but, as noted above, it was Brantley who introduced Bevins to Vindman, and Vindman communicated frequently with Brantley.

9/ Vindman testified that the stock was worth "about 20 cents per share" when he received it in July. An account statement shows that Vindman received the stock on July 24, 2003. The closing price on that day was 23.4 cents per share.

associates began trading extensively in Marx stock. Vindman testified that he did not direct the trading of Massaro, Nader, and Brantley, but he admitted that he recommended trades to them. Massaro testified that Vindman asked him to buy a specific number of shares of Marx at a specified price several times during the summer of 2003, in addition to recommending Marx generally. 10/

During this period, Marx traded on the OTC Bulletin Board. On July 23, 2003, Vindman made his first two purchases of 15,000 and 30,000 shares of Marx stock at 19 cents per share in the open market, followed by Brantley's friend Bevins, who made three purchases for a total of 29,000 shares at 19 cents per share. 11/ Between July 23, 2003 and early September 2003, Vindman, Massaro, Nader, Brantley, and Bevins made many trades in Marx stock. For example, between July 23 and July 29, Vindman bought 222,000 shares of Marx stock in thirteen transactions; he made only one sale, of 15,000 shares. During the same week, Bevins bought 476,000 shares of Marx, Massaro bought 55,500 shares, and Nader bought 175,000 shares and sold 100,000. Trading by Vindman, Massaro and Bevins on July 23 amounted to 11.5% of the daily volume in Marx shares. 12/ Trading by Vindman, Massaro, Nader, Brantley and Bevins on July 29 accounted for at least 23% of the daily volume. 13/ Vindman and his acquaintances made many relatively small purchases rather than acquiring larger blocks of stock, trading consistent with apparent widespread general market interest in Marx caused by unimpeded forces of supply and demand.

Vindman's purchases of Marx were in lots that were small in relation to his existing two-million-share holding, at increasing prices. On July 24, he bought a total of 62,000 shares of Marx in three transactions at 23 cents per share and 10,000 shares at 24 cents per share. On that date, he sold 15,000 at 25 cents per share. On July 28, he purchased a total of 24,000 shares in

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10/ Massaro was the only one of Vindman's Internet acquaintances who testified at the administrative hearing.

11/ Vindman, like most of his associates, had multiple brokerage accounts. Vindman, for example, traded in Marx in accounts in his name at Ameritrade; Spencer Edwards, Inc.; BMA Securities, Inc.; and Track Data Securities; he also traded in Marx in the Progress account at Westminster Securities Corp.

12/ As of December 31, 2002, Marx had 15,242,432 shares of stock outstanding. The number of outstanding shares rose to 30,473,000 by June 30, 2003, and to 47,653,000 by September 30, 2003, an increase of more than 200% in nine months. Between January 2 and December 31, 2003, Marx's daily trading volume averaged fewer than 650,000 shares.

13/ On July 29, the five named individuals bought 534,000 shares of Marx stock, 30% of the daily trading volume. They also sold 127,900 shares. Even if all sales were to other individuals in the group, the net of 406,100 shares accounted for 23% of the daily volume.

two transactions at 24 cents per share and a total of 31,000 shares in two transactions at 25 cents per share. On July 29, he purchased 15,000 shares at 27 cents per share and a total of 35,000 shares in two transactions at 28 cents per share, and on July 31, he purchased 6,000 shares at 28 cents per share and sold 20,000 shares at 32 cents per share.

By July 30, the price of Marx stock, which at the beginning of 2003 was about 2.5 cents per share and which was 19 cents per share when Vindman made his initial purchases on July 23, had reached about 32 cents per share. On August 15, it reached its high closing price of 36.5 cents per share. Vindman continued to trade in Marx stock. He traded in his own name on July 31 and August 4, 12, 13, 14, and 15, purchasing at prices between 30 and 37 cents per share and selling at between 34 and 39 cents per share. These trades involved thirty-five separate transactions. The largest transaction was a sale of 30,000 shares, and five other transactions were for 20,000 or more shares. The smallest of these transactions was a sale of 100 shares, and seven other transactions were for 1,000 or fewer shares. Vindman also bought 50,000 shares at 31 cents per share for the Progress account on August 13 and a total of 80,000 shares in three transactions at 36 cents per share for that account on August 14.

On August 18, UIT announced that it had terminated the licensing agreement with Marx. Wise responded by initiating litigation against UIT. Settlement negotiations between UIT and Marx promptly ensued. On August 18, immediately after the announcement of the termination of the licensing agreement, the closing price of Marx stock dropped to 25 cents per share.

Vindman testified that, after UIT's announcement of the termination of the licensing agreement, he became concerned that the price of Marx stock was falling because market participants were "shorting" the stock, i.e., selling stock that they did not own with the intent of buying it back in the future after the market declined. 14/ Vindman testified that he thought that some of the sellers of Marx stock were "naked" short sellers, in other words, that they were selling stock that they had no realistic prospect of borrowing. Vindman testified that he concluded that, unless the short selling were stopped, Marx would be unable to get financing to develop and market IM Buddies, a project he regarded as key to Marx's success, if and when the settlement negotiations resulted in a renewed business relationship between the companies. Therefore, he testified, he began "fighting the shorts." 15/

14/ In a short sale, the broker borrows the stock that is delivered to the purchaser, and the seller later "covers" by buying the stock needed to pay off the loan. Ideally, from the short seller's standpoint, the stock price will fall to zero, enabling the seller to cover at no cost.

15/ The blue sheet data in the record reflect only three short sales during this period: two sales on August 15 for 49,000 shares at 36 cents per share and one on August 20 for 10,000 shares at 31 cents per share.

Massaro testified that Vindman "pretty often" discussed with him Vindman's concerns about the short selling of Marx stock. 16/ Vindman told Massaro that he thought that, if the price of Marx stock reached 40 cents per share, the brokers who had lent stock for delivery to buyers would force the short sellers to cover by buying Marx at the market price. 17/

Wise, who was still trying to negotiate a settlement with UIT, sought the assistance of David Stetson and Steven Ingrassia in raising the price of Marx stock. Although Wise made the initial contact, Vindman also became involved in dealing with Stetson and Ingrassia, whom he understood to be stockbrokers. 18/ In a series of telephone conversations, Vindman described what his associates had been doing and attempted to persuade Stetson and Ingrassia to work with them in the effort to raise the price of Marx stock.

In a telephone conversation with Stetson on August 21, Vindman said that his "guys" had been "fighting the shorts," that they "[had] a lot of money in this," and that they were on the verge of breaking the shorts before the news of the termination of the UIT licensing agreement became public. 19/ Vindman told Stetson, "[I]t's hard . . . when we, I have so much money in, to keep going, so we've just been fighting with them to stabilize it." Vindman suggested to Stetson that, if Stetson and Vindman, working together, could buy three to four million shares, their

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16/ Massaro testified that Vindman expressed these concerns during the summer of 2003, but he did not provide a more precise date.

17/ The practice Vindman described is commonly termed a "short squeeze." See, e.g., Dean Witter Reynolds, Inc., Exchange Act Rel. No. 46578 (Oct. 1, 2002), 78 SEC Docket 1849, 1853 (settled case).

18/ Stetson and Ingrassia were former representatives of a registered broker-dealer who were cooperating with the Federal Bureau of Investigation (FBI) as witnesses in a fraud case involving their former employer. They informed the FBI that Wise had contacted them about Marx. The FBI then arranged to monitor and record telephone calls between Stetson, Ingrassia, Wise, and Vindman. Transcripts of these conversations are in the record. Vindman testified that Wise first mentioned Stetson and Ingrassia to him in early to mid-August 2003, suggesting that they could help raise money for Marx. Vindman testified that he advised against involving Stetson and Ingrassia with Marx at that time: "I don't think you should be getting anybody involved in this company. The company is doing fine on its own. The stock is trading well. . . . [E]verything is going great."

19/ Vindman's statement that his guys were on the verge of breaking the shorts before the news of the termination of the licensing agreement became public appears inconsistent with his testimony (including the testimony quoted above that he told Wise in early to mid-August that the stock was trading well and everything was going great), the dates of the e-mail messages about short sales he introduced into evidence, and the assertion in his opening brief that his concerns about short sales arose only after UIT announced its termination of the licensing agreement.

purchases probably would raise the price of Marx stock to 40 cents a share. He told Stetson that the key was "breaking the shorts," that "40 is the key here," and that Marx needed "some help to break it over some resistance points." 20/ Vindman offered Stetson one million shares of stock if he helped Vindman raise the price to 40 cents per share. Vindman told Stetson that he had a "big network" and that other stocks "we've done," including Datameg, Rocky Mountain Energy, and Enviro-Energy had "gone up" between "an average, 500 to 1,000 percent." Stetson agreed to start buying Marx stock for his own account.

In his August 21 telephone conversations with Stetson, Vindman explained that he needed help from Stetson "right away" because his "guys" were flying into Atlantic City from Arizona, Texas, and Connecticut, among other places. Vindman stated that he had a problem because "like I said, my guys, are all like in transit," and he added, "I just don't want the shorts to take us down." On August 23, two days after this conversation, Vindman, Massaro (of Connecticut), Nader (of Texas), Brantley (of Arizona), and Bevins (also of Arizona) were photographed having dinner together in Atlantic City. The chief executive officer of Datameg was also at the dinner.

In an August 27 telephone conversation with Ingrassia, Vindman reported that he was "battling the shorts another day." Ingrassia urged Vindman to come meet with him in person, but Vindman said that he "can't leave during the market" because if he left "there's nobody watching the stock. That's the problem, and I'm battling shorts here, that any advantage they can they'll just knock it down." Vindman said that he, the "quarterback," could not leave because the guys "can do this and that," but without his guidance, "they don't know like as a team what they are doing together."

No personal meeting between Vindman, Stetson, and Ingrassia ever took place, and the record does not show that either Stetson or Ingrassia ever bought, or persuaded customers to buy, Marx stock. The price per share of Marx stock never reached 40 cents, and Vindman never arranged for Stetson or Ingrassia to receive Marx stock.

Vindman continued to trade in Marx stock after UIT's termination of the licensing agreement. He made additional purchases in his own name on August 18, 20, 21, 22, 25, and 26, and on September 2, in forty-one total transactions in lots ranging from 5,000 to 39,000 shares. Vindman also sold Marx shares in twenty-one transactions of from 565 to 20,000 shares on August 19, 20, and 21, and he bought shares in the Progress account on August 13 and 14, in four transactions of from 15,000 to 50,000 shares. Vindman's last sale of Marx occurred on August 21, the day of his first taped telephone conversation with Stetson.

20/ The closing price of Marx on August 21 was 28 cents per share.

On September 5, 2003, Wise and Vindman were arrested and charged criminally with securities fraud based on substantially the same conduct at issue in this proceeding. 21/ Between July 23 and September 4, 2003, the day Vindman first traded in Marx stock and the day before his arrest, both the price of Marx shares and the daily trading volume increased. From July 1 to July 23, 2003, the price per share of Marx stock never exceeded 19 cents; after Vindman's arrest on September 5, the price per share never exceeded 16 cents. Between July 23 and September 4, the closing price ranged from 22 cents per share to 36.5 cents per share. 22/ Although Marx's daily trading volume averaged fewer than 650,000 shares in calendar year 2003, it exceeded one million shares on seventeen of the thirty-one trading days between July 23 and September 4.

III.

A. Section 17(a), Section 10(b), and Rule 10b-5

Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5 prohibit, among other things, the employment of a scheme to defraud in connection with the offer, purchase, or sale of a security. Manipulation of the market in a security violates these provisions. 23/ Manipulation is "intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities." 24/ It "strikes at the heart of the pricing process on which all investors rely [and] attacks the very foundation and integrity of the free market system." 25/ Proof of a manipulation usually "depends on inferences drawn from a mass of factual detail," including patterns of behavior, apparent irregularities, and trading data. 26/

21/ This administrative proceeding was stayed during the parallel criminal proceeding. A jury found Vindman not guilty of the charges against him.

22/ The closing price of Marx stock ranged from 2.5 cents to 36.5 cents per share during 2003, attaining its highest closing price on August 15, 2003, the last business day before the announcement by UIT that its contract with Marx was null and void. Between August 18 and September 4, the closing price ranged from 33 cents per share (on August 19) to 22.1 cents per share (on September 4). On September 5, the day Vindman and Wise were arrested, the closing price dropped to 11.5 cents per share.

23/ E.g., Pagel, Inc., 48 S.E.C. 223, 228 (1985), aff'd, 803 F.2d 942 (8th Cir. 1986).

24/ Ernst & Ernst v. Hochfelder, 425 U.S. 185, 199 (1976).

25/ L.C. Wegard & Co., 53 S.E.C. 607, 617 (1998), aff'd, 189 F.3d 461 (2d Cir. 1999) (Table).

26/ Pagel, Inc., 48 S.E.C. at 226.

Vindman's own trading; the trading of his associates Massaro, Nader, Brantley, and Bevins; and his attempts to orchestrate trading by Stetson and Ingrassia and their customers were all designed for the purpose of raising Marx's trading volume and share price. Vindman's receipt of two million shares of Marx stock in purported compensation for ill-defined, insubstantial "services" provided to Marx; his involvement in arranging for Massaro to receive Marx shares as a reward for equally minimal "services"; his admission that he recommended trades to Massaro, Nader, and Brantley; and Massaro's admission that Vindman repeatedly asked him to make specific purchases of Marx stock at specified prices all support our conclusion that Vindman was attempting to raise the trading volume and the price of Marx stock through his own trading and his orchestration of the trades of others. The concentrated trading by Vindman, Massaro, Nader, Brantley, and Bevins that began on July 23, amounting to as much as 23% of the daily volume in Marx shares, was instrumental in raising the price of Marx shares by more than 66% over the course of one week. The trading by these five persons during the period between July 23 and September 5, the date of Vindman's arrest, similarly contributed to an increase in closing prices over previous and subsequent levels and a marked increase in daily trading volume. 27/

The recordings of Vindman's telephone conversations with Stetson and Ingrassia confirm this circumstantial evidence and demonstrate Vindman's manipulative purpose. 28/ These recordings reveal Vindman's clear intent to raise the price of Marx stock to at least 40 cents per share, purportedly as a technique to "fight" the short sellers who allegedly became active after UIT terminated the licensing agreement. In his telephone conversations with Stetson and Ingrassia, Vindman expressed concerns about the impact of short sales on the price of Marx stock, and he stated that his "guys" had been fighting the short sellers. 29/ Vindman also informed Stetson and Ingrassia of his interest in seeing the price of Marx rise to 40 cents a share, his belief that the coordinated, sustained purchase of three to four million shares would be enough to achieve that goal, and his need as the "quarterback" to avoid leaving "during the market" because the "guys" would not "know like as a team what they are doing together." Such attempts to inflate or stabilize the market price represent deliberate interference with market pricing mechanisms; they are by their very nature manipulative.

Vindman admits that he was engaged in what he terms "battling the shorts." Vindman contends, however, that this "battling" consisted of trying to ensure that Marx would become a viable company on the fundamentals. Vindman argues that he believed IM Buddies would be an extremely important product for Marx, and that his remarks about "fighting the shorts" referred to his promotional efforts to support Marx as it struggled to overcome the negative impact of short sales, not to a manipulative scheme to affect the trading price of Marx shares.

27/ See supra note 22 and accompanying text.

28/ Markowski v. SEC, 274 F.3d 525, 529 (D.C. Cir. 2001).

29/ Massaro's testimony about the target price of 40 cents per share and the actions to "fight" short sellers is consistent with Vindman's conversations with Stetson and Ingrassia.

We, like the law judge, are not persuaded by Vindman's testimony that he used "fighting the shorts" to refer to something other than coordinated trading. 30/ Vindman offered only vague generalities as to what he did to further his "marketing campaign" for Marx stock. When asked at the hearing what he meant by the term "battling the shorts," Vindman responded: "Part of it meant basically the conversations we had. Part was the message board stuff that was going on. Part of it was just, I know, hoping that the company would come around and get the settlement [of the contract termination dispute with UIT] done." In contrast, a conversation with Stetson and Ingrassia is more explicit as to his intent to affect the stock price through coordinated trading:

> I know there's a short on the stock that's trying, you know, uh, that's been, we've been fighting, trying to bring the stock down. . . . [T]he way, you know, is to beat them on the bid. . . . I think the key [is] the stock and breaking the shorts. I

30/ Vindman argues that, when Massaro, Nader, Brantley, and Bevins were interviewed by the FBI, they all denied that Vindman was orchestrating their trading activity. The record contains summaries of the FBI's interviews with each of these individuals. Vindman argues that the Division did not call these individuals to testify at the hearing, and he urges us to accept the FBI interviews as proof that the "network" was not engaged in the manipulation charged.

Under appropriate circumstances, we may consider hearsay evidence such as the interview summaries. See Charles D. Tom, 50 S.E.C. 1142, 1145 (1992) (discussing factors used in evaluating hearsay evidence). In this instance, while we have considered the summaries, other record evidence refutes the assertions in them on which Vindman relies.

The trading by the same group of individuals in other stocks that Vindman was "promoting"; the provision of large quantities of Marx shares at no cost to Vindman, Massaro, and Nader; the frequent contacts by telephone and e-mail between Vindman and the other individuals; the admissions that Vindman recommended trades and on occasion asked Massaro to make specific trades; the extensive trading in Marx by Vindman and the other individuals in question during the period at issue; and the statements by Vindman to Stetson and Massaro about his role as "quarterback" in coordinating his "guys" and about the increase in price of other stocks with which he had been involved (including stocks in which he and the other "guys" were trading earlier in 2003) is evidence supporting a finding of manipulation that contradicts and outweighs the assertions contained in the interviews to the effect that Vindman was not orchestrating the trading of the "network."

With regard to Vindman's argument that the Division failed to call Nader, Brantley, and Bevins as witnesses at the hearing, we note that, if Vindman believed that the testimony of the remaining individuals would have aided his defense, he was free to call them as witnesses. He did not.

> mean, this stock has a market of its own. It just needs . . . some help to break it over some resistance points . . . . I know 40, 40 is the key here. . . . [W]e could get to 40 and break it . . . my guys could go back in . . . . You have to develop the market like I've been doing, and bring it to 32, and then . . . just stop them on the bid, like I've been doing. I would say probably 3 to 4 million shares that we'd need to buy.

Other portions of Vindman's conversations with Stetson and Ingrassia further demonstrate that "fighting the shorts" was a scheme involving coordinated trading rather than a promotional campaign. On August 21, for example, Vindman explained to Stetson that his "guys are all like in transit," en route to Atlantic City, and that "I just don't want the shorts to take us down," suggesting that the other "network" members were not available to trade Marx. Similarly, in the August 27 conversation with Ingrassia, Vindman explained his reluctance to leave the office during trading hours by saying that if he, the "quarterback," left the office, the members of the "network" "don't know like as a team what they are doing together." We therefore find that Vindman's references to fighting the shorts referred to plans involving purposeful, coordinated stock trading designed to raise the price per share of Marx stock, not a promotional campaign. 31/

31/ Vindman contends that, in using the word "network," he was referring merely to "a series of contacts and not a criminal conspiracy." Whether the individuals concerned were involved in a criminal conspiracy is not an issue in this proceeding. We reject, however, Vindman's argument that the "network" was merely a collection of individuals who conversed in Internet chat rooms. On the basis of the record, including the patterns of trading in Marx and other stocks, the arrangement by Vindman for Massaro to receive Marx stock, Massaro's admission that Vindman asked him to buy a specific number of shares of Marx at a specified price, and the remarks quoted above about the "problem" caused by the "guys" being in transit and the inability of the "guys" to "know like as a team what they are doing together" if Vindman left the office during trading hours, we find that Vindman coordinated trading in Marx stock by Massaro, Nader, Brantley, and Bevins with the object of increasing the price of that stock.

Before Vindman made his initial purchase of Marx stock in the open market on July 23, the record shows that he and various members of his "network" – Massaro, Nader, Brantley, and Bevins – traded in other stocks – Datameg, EnviroEnergy, and Rocky Mountain Energy – at or about the same time. These are stocks that Vindman was allegedly promoting, just as he was allegedly promoting Marx after July 23. Moreover, these were stocks that had risen, Vindman later boasted to Stetson, between 500 and 1000 percent. Thus, the record shows a pattern of coordinated trading by Vindman and his associates.

The law judge found that the record did not support a finding that Vindman was

(continued...)

Vindman contends that the naked short sales that he alleges were threatening Marx's viability were a "short and extort" scheme that was both manipulative and illegal, and that this illegal conduct was the cause of any manipulation that may have occurred. 32/ Although Vindman testified as to his belief that there was significant naked short selling of Marx shares, the record does not support this. 33/ Even if there were such short selling or Vindman had a good faith belief that Marx stock should be priced at 40 cents per share, however, that would not justify Vindman's manipulation. 34/ Manipulation violates the antifraud provisions even when it is employed in an attempt to bring the stock price artificially to a level where the manipulator

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31/ (...continued)
orchestrating Weinfeld's trading. In its petition for review and its brief on appeal, the Division limited its appeal to the law judge's finding that Vindman is unable to pay a penalty of more than $20,000. Although the Division asserted at oral argument that Weinfeld was a member of the "network," we find that this argument was waived. See Rule of Practice 410(b), 17 C.F.R. § 201.410(b).

32/ Although "naked short selling" is not a defined term in the federal securities laws, the Commission has taken regulatory action to reduce short selling abuses. See Short Sales, Exchange Act Rel. No. 50103 (Aug. 6, 2004), 83 SEC Docket 1492, 1493 (noting that location and delivery requirements of Regulation SHO "will act as a restriction on so-called 'naked' short selling") (footnote omitted).

33/ Vindman introduced several copies of postings from an Internet website that purported to support his contentions about short sales of Marx stock. These messages do not establish that short selling of Marx stock, let alone naked short selling, was widespread. Only one of the posters identifes himself as a short seller of Marx stock. The postings do not indicate that any of that seller's sales were naked short sales. Moreover, although that poster advocates short selling, the record does not establish that anyone followed the recommendation.

The Division correctly asserts that the only short sales documented by blue sheet data for cleared trades during the period in question were three transactions executed for two individuals: two sales on August 15 and one on August 20, representing total short sales of 59,000 shares at prices ranging from thirty-one to thirty-six cents, for a net aggregate of $20,773.85. Vindman points to nothing in the stipulated trading records that would contradict this assertion.

34/ Vindman argues that he identified forty cents per share as "an accurate and legitimate value for a healthy stock" by charting Marx stock, and that the figure was therefore not "an arbitrary value set by a 'manipulator.'" The way in which Vindman arrived at the forty-cent target figure is irrelevant.

believes it should rightfully be. 35/ In any event, Vindman's argument that "fighting the shorts" was a justified reaction to naked short sales relates only to the manipulation that occurred during the period following UIT's August 18 announcement of the termination of its licensing agreement with Marx. Vindman's argument does nothing to explain the manipulation by Vindman and his associates, described above, that occurred between late July and mid-August.

Liability under Sections 17(a)(1) and 10(b) and Rule 10b-5 requires scienter, which may be established by a showing of intentional or reckless conduct. 36/ Vindman's own trading and his orchestration of the trading of Massaro, Nader, Brantley, and Bevins manifest an intent to raise the price and volume of Marx stock. His tape-recorded statements confirm his conduct to have been intentional: his stated objective was to move the price per share of Marx stock to 40 cents, an achievement that he would reward with Marx stock. We thus find that Vindman acted with scienter. 37/

Vindman argues that he cannot be found to have manipulated the market for Marx stock because the record does not show that he exerted domination and control over the market for an extended time, noting that there were millions of shares of Marx stock outstanding. 38/ Manipulative schemes may have many aspects and, although domination and control are often

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35/ See, e.g., U.S. v. Hall, 48 F. Supp. 2d 386, 386-87 (S.D.N.Y. 1999); cf. John Gordon Simek, 50 S.E.C. 152, 159 (1989) ("Wrongful conduct by another does not justify a respondent's own [wrongful acts] at the expense of innocent third parties.").

Vindman contends that one of the financial charts presented by the Division was determined to be inaccurate because it combined purchases and sales to arrive at the volume of trades by Vindman and his associates, but used only one side of each trade to calculate the total trading volume. The law judge based no conclusions on this exhibit, nor do we. Vindman does not challenge the accuracy of the trading data on which this and certain other exhibits are based. Brokerage account statements, Bloomberg financial data, and blue sheet data of cleared trades were all admitted by stipulation.

36/ See, e.g., Robert M. Fuller, Securities Act Rel. No. 8273 (Aug. 25, 2003), 80 SEC Docket 3539, 3546 n.20, pet. denied, No. 03-1334 (D.C. Cir. 2004).

37/ To the extent that Vindman argues his actions are not willful, he errs. A willful violation of the securities laws means merely the intentional commission of an act that constitutes the violation; there is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" Wonsover v. SEC, 205 F.3d 408, 414 (2000) (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)). Vindman's own trading in Marx stock; his coordination of the trading of Massaro, Nader, Brantley, and Bevins; and his attempts to enlist Stetson and Ingrassia in helping to bid up the price of Marx stock were intentional acts, and his violations of the antifraud provisions charged were therefore willful.

38/ See supra note 12.

involved, "[a] finding of manipulation does not hinge on the presence or absence of any particular device usually associated with a manipulative scheme." 39/ Indeed, by positing to Stetson that coordinated purchases of three to four million shares of Marx would probably raise the price per share to 40 cents, Vindman effectively conceded that control of that number of shares could be expected to affect the price of the stock. 40/ Similarly, although Vindman argues, citing expert testimony, that the transactions in question were not wash sales, the manipulation charged and found here is not predicated on the existence of such sales, so the absence of proof of such sales does not exonerate Vindman. 41/

Finally, Vindman argues that he failed to profit from his alleged manipulation of Marx stock, and that this absence of personal gain demonstrates a lack of manipulative intent. As we have previously found, however, "[w]hile profit is the normal goal of manipulators, their actions are not rendered innocent simply because they fail to achieve the desired result." 42/

For these reasons, we find that Vindman willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder.

39/ Swartwood, Hesse, Inc., 50 S.E.C. 1301, 1307 (1992).

40/ At the hearing, the Division's expert testified that penny stocks are readily susceptible to manipulation because institutions do not buy these stocks and analysts therefore do not follow them. The expert also testified that various types of conduct can artificially affect the price of a stock and that no specific conduct is required. Additionally, the expert testified that the stock of small companies is easier to manipulate than that of large companies, in part because smaller companies typically have less trading and therefore any trading is likely to affect the price.

41/ Vindman additionally argues that the price of Marx stock was affected by the distribution of Marx press releases, not by any alleged manipulation by Vindman. The record does not support Vindman's argument. Vindman introduced into evidence at the hearing only one of the press releases on which he relies (although most if not all of the others had been marked for identification), and there was only very limited testimony about the press releases and any impact they may have had on the price of Marx stock. Thus, the record does not establish that the press releases caused the rise in the price of Marx stock during the period of the manipulation charged. In any event, although Vindman contends that he "did not contribute to the substance of the press releases and cannot be [held responsible for] any misrepresentations that may be contained in the press releases," Vindman's own description of the breadth of the activities he performed while "promoting" Marx suggests that his involvement with the press releases, which may themselves have been manipulative, went beyond the limited role to which he admits.

42/ Michael J. Markowski, 54 S.E.C. 830, 835 (2000) (citation omitted), aff'd, 274 F.3d 525; see also Markowski, 274 F.3d at 529 ("Just because a manipulator loses money doesn't mean he wasn't trying.").

IV.

A. Civil Penalties and Ability to Pay

Section 21B of the Exchange Act allows the imposition of civil money penalties in certain administrative proceedings where a respondent has willfully violated any provision of the Securities Act, the Exchange Act, or the rules and regulations thereunder, and where such penalties are in the public interest. 43/ For each act or omission involving fraud that "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons," third-tier civil penalties may be warranted.

The law judge imposed a $20,000 third-tier civil penalty on Vindman, based on her conclusion that he was unable to pay more. The Division has appealed and seeks a civil penalty equal to a multiple of $120,000, the statutory maximum that may be assessed against an individual for each third-tier violation. 44/

As found above, Vindman's manipulation of the price of Marx stock involved fraud. Through his involvement in raising the price per share of Marx during the period of the manipulation, 45/ Vindman created a significant risk of substantial losses to those who traded in Marx stock. His manipulation adversely affected the integrity of the market and its pricing, causing at least some purchasers to engage in transactions at highly inflated prices. Moreover, Vindman's violations were intentional and involved multiple acts over a period of several months. We therefore conclude that a third-tier penalty is warranted.

The Division sought a civil penalty of at least $120,000 against Vindman. 46/ Vindman contends that he is unable to pay the amount sought by the Division, or even the lesser amount ordered by the law judge. As the respondent, Vindman had the burden of demonstrating inability

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43/ 15 U.S.C. § 78u-2.

44/ See Debt Collection Improvement Act of 1996, Pub. L. 104-134, title III, §31001; 17 C.F.R. § 201.1001. The Division calculated that multiplying $120,000 by the number of trades Vindman made in Marx would yield a penalty of more than $13 million, and that multiplying $120,000 by three (representing the two statutes and one rule Vindman willfully violated) would result in a penalty of $360,000.

45/ See text accompanying note 22 supra.

46/ In the filing before us, the Division asks that we impose on Vindman a total of $360,000 in civil penalties, a third-tier penalty for each violation of the antifraud provisions at issue here.

to pay. 47/ At the administrative hearing, he introduced a sworn financial statement listing assets of approximately $118,000, all but approximately $3,000 of which represented cash and securities, and liabilities of approximately $117,000. 48/ The liabilities asserted were characterized as $45,000 in loans from family members for the payment of legal and expert witness fees, $40,000 in estimated income taxes for 2003 and 2004, and $32,000 in legal fees.

In March 2006, after the oral argument, both the Division and Vindman sought to introduce new evidence pursuant to Rule of Practice 452. 49/ The Division submitted a consulting agreement showing that on March 30, 2005, Vindman, as President of E Priority Group, Inc. ("E Priority"), entered into a contract to provide consulting services to Royce Biomedical, Inc. ("Royce"), which subsequently assumed the name Smart-Tek Solutions, Inc. ("Smart-Tek"). The agreement provided that, in consideration for services, E Priority was to receive one million restricted shares of the company's stock. 50/ The Division also submitted a brokerage statement showing that 500,000 Smart-Tek shares were received in a brokerage account in the name of E Priority, c/o Vindman, in November 2005, and that Smart-Tek shares from that account were sold between November 22, 2005 and December 6, 2005. Finally, the Division submitted a check (and accompanying check request form) showing that $225,290.55 from that account was sent to E Priority, c/o Vindman, on January 5, 2006. In response to the Division's filing, Vindman sought to introduce a notice from the Internal Revenue Service, dated January 30, 2006, showing a liability of $97,330.11 for the tax period ending December 31, 2003. We grant the motions, and will consider these documents. 51/

47/ Terry T. Steen, 53 S.E.C. 618, 627 (1998).

48/ The statement is dated March 7, 2005, purportedly representing Vindman's financial condition as of February 28, 2005. The financial statement identified interest from securities in the amount of $10 per month as Vindman's sole source of income.

The instructions for completing the statement of financial condition required Vindman to attach tax returns filed during the years 2002 through 2004. Vindman did not attach any such returns. He represented that he had not yet filed for 2003 and 2004.

49/ 17 C.F.R. § 201.452.

50/ The consulting agreement became publicly available when it was attached as an exhibit to Smart-Tek's Form 10-KSB for the year ended June 30, 2005.

51/ Rule of Practice 452 allows the introduction of new evidence at any time prior to the Commission's issuance of a decision, where that evidence "is material and . . . there were reasonable grounds for failure to adduce such evidence previously." The documents submitted are material because they relate to Vindman's ability to pay a civil penalty. There were reasonable grounds for the failure to adduce the documents previously because they did not exist (or, in the case of the consulting agreement, did not become

(continued...)

In April 2006, Vindman filed an additional Rule 452 motion, seeking to introduce what purports to be a cancelled check, dated February 2, 2006, payable to "State of NJ – TGI," in the amount of $12,286.00, for "2003 State taxes." We deny Vindman's motion to introduce the cancelled check. He does not provide any grounds for the failure to adduce this document with his initial Rule 452 motion. 52/

Vindman admits that he received more than $225,000 in proceeds from sales of stock. He argues, however, that his financial predicament "is materially the same" as it was before he received those funds. 53/ He asserts that, although E Priority generated net profits of $340,000 for the year 2005, the net proceeds to Vindman (after asserted tax liabilities) are $140,000. He further asserts that, from these net profits, he has paid $78,000 in taxes that were delinquent for the year 2003 and remains obligated for $32,000 in interest and penalties. 54/ Deducting $110,000 for taxes paid and owing, Vindman asserts that he is left with approximately $30,000, and that the monies he owes his family members and in legal fees and other debts exceeds this amount.

As an initial matter, Vindman failed to comply with Rule of Practice 410(c), which requires any person seeking review of an initial decision who asserts inability to pay to file with the opening brief a sworn financial statement. 55/ When asked at oral argument why Vindman had not submitted an updated sworn financial disclosure statement, counsel for Vindman replied

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51/ (...continued)
publicly available) until after the conclusion of the proceeding before the law judge. We find that the documents submitted in March 2006 by both the Division and Vindman satisfy the requirements of Rule 452.

52/ Even if we were to admit the check pursuant to Rule 452, however, it would not alter our conclusion as to Vindman's ability to pay a $120,000 civil penalty. We further note that Vindman did not submit with his motion an affidavit or sworn statement pertaining to the check. Proposed evidence submitted under Rule 452 should be accompanied by such an affidavit or statement, not merely by representations of counsel.

53/ We note that in the account opening documents for the brokerage account into which the Smart-Tek shares were received, Vindman represented that his approximate net worth, exclusive of residence, as of November 3, 2005 was between $50,000 and $100,000, and that his approximate annual income was between $65,000 and $125,000.

54/ Vindman asserts that he is seeking to abate the penalties.

55/ 17 C.F.R. § 201.410(c). See Terry T. Steen, 53 S.E.C. at 627-28 (applying and construing Rule 410(c)).

that he "was unaware there was an issue until it was raised now." To date, he has failed to submit an updated statement. 56/

Vindman further failed to substantiate the liabilities he asserted before the law judge. He provided no other documentation substantiating his estimate of income taxes owed, nor any substantiation of legal fees due, or of his living expenses, nor any evidence showing that the checks written by relatives for legal or expert witness fees represented loans that he is expected to repay, even though the Division's brief on appeal noted the lack of substantiation of Vindman's claims. With his March 2006 Rule 452 motion, he submitted documentation only of his 2003 federal income tax liability.

Moreover, Vindman fails to substantiate his claims that he will be left with only $30,000 from the $225,000 he admittedly received in January 2006. 57/ He did not introduce evidence supporting his contention that $200,000 of E Priority's 2005 net profits would be assessed as tax (nor that those taxes have been paid). He did not introduce evidence that he paid $78,000 in delinquent taxes for 2003. 58/ Additionally, because he states that he is seeking to abate penalties owed, such penalties should not be regarded as a liability that will reduce the amount of civil penalty he can pay.

We conclude that Vindman has not shown that he is unable to pay a third-tier penalty of $120,000. Although Section 21B would allow a higher penalty because Vindman committed multiple violations, we find that a penalty in the amount of $120,000 is warranted.

Vindman contends that the law judge's imposition of the statutory civil penalty was in violation of his Seventh Amendment right to a jury trial. He asserts that the Commission ". . . may impose monetary penalties in administrative proceedings only when the violator is an entity directly regulated by the [Commission] . . . ." Vindman points out that he has never been a registered broker-dealer nor held a securities license of any kind. As a result, he argues that he is

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56/ With his March 2006 Rule 452 motion, Vindman submitted a two-sentence document in which he purports to "certify . . . that the foregoing statements and figures, although approximate, made by me are true." This document is undated, and there is no explanation as to which "statements and figures" he is referring. (The Rule 452 motion contains no reference to the attached "certification.") The "certification" is neither a statement made under penalty of perjury nor an affidavit. It does not satisfy the Rule 410(c) requirement of a sworn financial statement.

57/ Vindman's undated "certification," which is neither a sworn statement under penalty of perjury nor an affidavit, is not sufficient to substantiate these claims.

58/ As noted above, the cancelled check that Vindman sought to introduce in April 2006, which purported to represent payment for 2003 state taxes, was in the amount of $12,286.00. Vindman did not attempt to introduce such evidence of federal tax payments for 2003.

not subject to direct regulation by the Commission and, therefore, that the law judge's imposition of a civil penalty on him was unconstitutional.

We reject Vindman's argument. 59/ Vindman does not appear to dispute the Commission's authority to assess civil penalties constitutionally when it is statutorily authorized to do so. 60/ Under the Exchange Act, the Commission has the authority to impose a civil penalty on Vindman in this proceeding. Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to impose sanctions on any person who, at the time of the alleged misconduct, was participating in an offering of a penny stock. 61/ A person participating in an offering of a penny stock is defined in Exchange Act Section 15(b)(6)(C) as "any person acting as any promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purpose of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock . . . ." 62/

This definition is not limited to registered or licensed individuals. Vindman's conduct here makes him a person participating in an offering of a penny stock. 63/ In his brief on appeal, Vindman refers to his activities for Marx as those of a "stock promoter" and acknowledges that he "was promoting the Marx Toys stock." After a proceeding finding violations under Exchange

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59/ Vindman offers no decisional authority to support his argument. He cites only Exchange Act Section 21B, 15 U.S.C. § 78u-2, which we discuss below, and inapplicable provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

60/ See Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n, 430 U.S. 442, 450 (1977), ("[I]n cases . . . in which the Government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact . . . the Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible.").

61/ 15 U.S.C. § 78o(b)(6)(A).

62/ Id. § 78o(b)(6)(C).

63/ See Exchange Act Section 3(a)(51)(A), 15 U.S.C. § 78c(a)(51)(A) (defining penny stock); Exchange Act Rule 3a51-1, 17 C.F.R. § 240.3a51-1(d) (defining penny stock to exclude, among other things, stocks priced at or above five dollars per share and stocks of issuers that have substantial net tangible assets). Between July 23 and September 4, 2003, the intra-day price of Marx stock did not exceed 39 cents per share.

Act Section 15(b), as we have done here, Exchange Act Section 21B expressly permits the Commission to impose civil penalties on such a person. 64/

B. Penny Stock Bar

Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to bar a person from participating in an offering of penny stock if the person willfully violated federal securities laws while participating in the offering of any penny stock, and the bar is in the public interest. 65/ In determining whether a sanction is in the public interest, we consider the factors articulated in Steadman v. SEC. 66/ These factors include the isolated or recurrent nature of the infraction at issue, the degree of scienter involved, the sincerity of any assurances against future violations, and the likelihood that a respondent's occupation will present opportunities for future violations. 67/

Vindman's manipulation of the price of Marx stock was deliberate and involved the orchestration (and attempted orchestration) of the trading of others as well as Vindman's own trading. The manipulation lasted for weeks. The patterns of trading in Marx by Vindman, Massaro, Nader, Brantley, and Bevins and the taped conversations between Vindman, Stetson, and Ingrassia, with their references to a target price of 40 cents per share, fighting to stabilize the stock price, and Vindman's acting as "quarterback" because otherwise the guys on the "team" "don't know . . . what they are doing together," establish that Vindman's conduct was intentional. The argument that manipulation may be an acceptable technique to counter the effects of alleged short selling suggests that Vindman will not avoid future violations if he believes that circumstances justify his taking matters into his own hands. Vindman appears to have engaged in similar conduct in the past. Vindman represented to Stetson that the prices of other stocks that he and his "network" had "done" had increased "an average, 500 to 1,000 percent," and trading records show that many of the individuals whose trading in Marx stock is at issue here were previously trading simultaneously in other stocks that Vindman was promoting. Moreover, Vindman's trading and experience as a promoter will give him opportunities for future violations. As noted above with respect to E Priority, Vindman appears to continue his activities as a promoter. Thus, based on our consideration of the Steadman factors, we conclude that sanctions are in the public interest.

64/ 15 U.S.C. § 78u-2. See Robert G. Weeks, Exchange Act Rel. No. 48684 (Oct. 23, 2003), 81 SEC Docket 1319 (imposing $200,000 civil money penalty pursuant to Exchange Act Section 21B on consultant who participated in penny stock offering).

65/ 15 U.S.C. § 78o(b)(6)(A).

66/ 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

67/ Steadman, 603 F.2d at 1140.

We find that Vindman committed repeated significant violations of antifraud provisions of the federal securities laws, as discussed above, while participating in the offering of Marx stock, a penny stock. We further find that Vindman acted willfully, and that a penny stock bar is in the public interest.

C. Cease-and-Desist Order

Securities Act Section 8A(a) and Exchange Act Section 21C authorize 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 either of these acts or any rule or regulation thereunder, or against any person who "is, was, or would be a cause of [a] violation, due to an act or omission the person knew or should have known would contribute to such violation." 68/ In determining whether a cease-and-desist order is an appropriate sanction, we look to whether these is some risk of future violations. 69/ The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction. 70/ A single violation can be sufficient to indicate some risk of future violation. 71/ We also consider whether other factors demonstrate a risk of future violations. Beyond the seriousness of the violation, these may include the isolated or recurrent nature of the violation, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, the respondent's state of mind, the sincerity of assurances against future violations, the opportunity to commit future violations, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions sought in the proceeding. 72/ Not all of these factors need to be considered, and none of them, by itself, is dispositive.

Vindman engaged in repeated significant violations of the securities laws. The violations were recent, and they involved multiple acts over a period of several months. Although it is difficult to quantify the harm caused by Vindman's manipulation, his interference with the pricing process adversely affected the integrity of the free market system. 73/ The magnitude of the manipulation at issue here is sufficient to indicate some risk of future violation. Moreover,

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68/ 15 U.S.C. §§ 77h-1(a), 78u-3.

69/ KPMG Peat Marwick, 54 S.E.C. 1135, 1185 (2001), reconsideration denied, 74 SEC Docket 1351 (Mar. 8, 2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002).

70/ KPMG Peat Marwick, 54 S.E.C. at 1191.

71/ See Geiger v. SEC, 363 F.3d 481, 489 (D.C. Cir. 2004).

72/ KPMG Peat Marwick, 54 S.E.C. at 1192.

73/ See L.C. Wegard & Co., 53 S.E.C. at 617 (manipulation "strikes at the heart of the pricing process on which all investors rely [and] attacks the very foundation and integrity of the free market system").

Vindman's contention that "battling the shorts" by attempting to manipulate the stock price, as he did here, was a justified response to alleged naked short selling suggests a readiness to resort to violative conduct again in the future if he perceives such conduct to further his interests. His boasts to Stetson about his "big network" and his successful involvement in increasing the prices of other stocks 500 to 1000 percent also suggest a likelihood of repeated misconduct. 74/ Although we have ordered a penny stock bar and the payment of a civil penalty, the issuance of a cease-and-desist order should serve the remedial purpose of encouraging Vindman to take his responsibilities more seriously in the future, should his involvement with the securities industry continue. 75/

74/ The law judge did not accept Vindman's argument that his representations to Stetson about his past experiences in raising and stabilizing stock prices were mere puffery designed to impress Stetson. We agree that this determination is amply supported by the record.

75/ See McCurdy v. SEC, 396 F.3d 1258, 1265 (D.C. Cir. 2005) (recognizing that order suspending auditor from practice before the Commission for one year had remedial purpose of encouraging more rigorous compliance with generally accepted auditing standards in future).

We find that the record as a whole, especially the evidence with regard to the seriousness, recentness, and repeated nature of the violations, the harm to the marketplace resulting from the violations, and Vindman's state of mind, establishes a sufficient risk that Vindman would commit future violations to warrant imposition of a cease-and-desist order. Based on all of these factors, we find a cease-and-desist order to be in the public interest.

An appropriate order will issue. 76/

By the Commission (Chairman COX and Commissioners GLASSMAN, CAMPOS, and NAZARETH); Commissioner ATKINS not participating.

Nancy M. Morris
Secretary

76/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Rel. No. 8679 / April 14, 2006

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 53654 / April 14, 2006

Admin. Proc. File No. 3-11247

In the Matter of

VLADLEN "LARRY" VINDMAN

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day it is

ORDERED that Vladlen "Larry" Vindman cease and desist from committing or causing any violations or future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; and it is further

ORDERED that Vladlen "Larry" Vindman be, and he hereby is, barred from participating in any offering of penny stock, including acting as a promoter, finder, consultant, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock; and it is further

ORDERED that Vindman pay a civil money penalty of $120,000.

Payment of the civil money penalty shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) mailed or delivered by hand to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312; and (iv) submitted under cover letter that identifies the respondent and the file number of this proceeding.

A copy of the cover letter and check shall be sent to Howard S. Kim, Division of Enforcement, Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, Room 4300, New York, NY 10281-1022.

By the Commission.

Nancy M. Morris
Secretary