INITIAL DECISION RELEASE NO. 266
ADMINISTRATIVE PROCEEDING
FILE NO. 3-10268

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

In the Matter of	:	
	:	
HERBERT M. CAMPBELL II, ESQ.	:	INITIAL DECISION
	:	October 27, 2004
	:	

APPEARANCES: Edward C. Schweitzer, Jr., for the Office of General Counsel, United States Securities and Exchange Commission

Herbert M. Campbell II, Esq., pro se

BEFORE: Robert G. Mahony, Administrative Law Judge

INTRODUCTION

On August 10, 2000, the Securities and Exchange Commission (Commission) issued an Order Instituting Public Administrative Proceeding and Imposing a Temporary Suspension Pursuant to Rule 102(e)(3) of the Commission's Rules of Practice (OIP), against Herbert M. Campbell II, Esq. (Campbell).[1] The Commission found that a permanent injunction had been entered against Campbell by the United States District Court for the District of New Mexico in SEC v. Solv-Ex Corp., Case No. 98-860 BB/RLP (D.N.M. 2000). The injunction was based on the district court's findings that Campbell had violated certain provisions of the federal securities laws. OIP at 2-3. The Commission deemed it necessary and appropriate and in the public interest to issue an order temporarily suspending Campbell. OIP at 3.

On September 8, 2000, Campbell filed a petition to lift the temporary suspension, pursuant to Rule 102(e)(3)(ii) of the Commission's Rules of Practice. On September 15, 2000, the Office of General Counsel (OGC) filed its opposition to Campbell's petition. On October 6, 2000, the

[1] In relevant part, Rule 102(e)(3)(i) of the Commission's Rules of Practice authorizes the Commission, without holding a preliminary hearing, to temporarily suspend an attorney from appearing or practicing before it if a court of competent jurisdiction, in an action brought by the Commission, has permanently enjoined an attorney from or found the attorney violated a provision of the federal securities laws. Due regard must be given to the public interest when ordering a temporary suspension.

Commission issued an order denying Campbell's motion to lift the temporary suspension and ordered that the proceeding be set for public hearing before an administrative law judge. See Herbert M. Campbell II, 73 SEC Docket 1617 (Oct. 6, 2000); see also 17 C.F.R. §§ 201.102(e)(3)(iii), .110.

On April 11, 2003, the administrative proceeding was stayed pending Campbell's appeal of the district court's ruling to the United States Court of Appeals for the Tenth Circuit (Tenth Circuit). The stay of the administrative proceeding was lifted on May 18, 2004, following the conclusion of the proceeding before the Tenth Circuit.[2] On June 28, 2004, OGC filed a motion seeking permanent disqualification of Campbell, pursuant to 17 C.F.R. § 201.102(e)(3)(iv) (Motion). On August 27, 2004, Campbell filed a Response, to which OGC did not reply.[3]

ISSUES

Whether Campbell was permanently enjoined and/or found to have violated the federal securities laws by a court of competent jurisdiction, in an action brought by the Commission, and, if so, whether he should be censured or temporarily or permanently disqualified from appearing or practicing before the Commission, pursuant to Rule 102(e)(3) of the Commission's Rules of Practice.

FINDINGS OF FACTS

The findings and conclusions in this Initial Decision are based on the entire record. I applied preponderance of the evidence as the standard of proof. Steadman v. SEC, 450 U.S. 91, 102 (1981); see also William R. Carter, 47 S.E.C. 471, 472 n.3 (1981) (applying standard to a proceeding under Rule 2(e), predecessor to Rule 102(e)). All arguments and proposed findings and conclusions inconsistent with this Initial Decision are rejected.

Background

On March 31, 2000, in a civil action brought by the Commission, the district court issued its findings of fact and conclusions of law, finding that Campbell violated Section 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 (Exchange Act), and Rule 10b-5 thereunder by making material misrepresentations and/or omissions

[2] Once the stay was lifted, OGC and Campbell informed the undersigned that a hearing was not necessary and opted to submit their respective positions in briefs. (May 17, 2004, Prehearing Tr. at 5.)

[3] Attached to OGC's Motion are: (1) a copy of the May 16, 2000, Final Judgment of Permanent Injunction and Other Relief issued by the district court; (2) a copy of the March 31, 2000, Findings of Facts and Conclusions of Law issued by the district court; (3) a copy of the September 24, 2003, Amended Findings of Fact and Conclusions of Law issued by the district court; (4) a copy of the decision by the Tenth Circuit, SEC v. Solv-Ex Corp., 2004 WL 811796 (10th Cir. 2004); (5) a copy of Solv-Ex Corporation's Form 10-K for the fiscal year ended June 30, 1995, which it filed on October 13, 1995; and (6) the Declaration of Patti J. Dennis, Special Counsel in the Office of Enforcement Liaison in the Division of Corporation Finance. OGC's Exhibits will be cited as "(Ex. ___ .)." Campbell's Response did not include any exhibits.

in public statements and Commission filings. On May 16, 2000, the district court entered its final judgment, permanently enjoining Campbell from violating those provisions and ordering him to pay a civil penalty of $5,000. The final judgment incorporated the district court's findings of facts and conclusions of law entered on March 31, 2000. (Exs. A-B.) Campbell appealed the decision to the Tenth Circuit, which made a limited remand to the district court to supplement its factual findings.

On September 24, 2003, the district court issued amended findings of fact and conclusions of law. (Ex. C.) On April 15, 2004, the Tenth Circuit affirmed the judgment of the district court for "substantially the reasons set forth in its detailed and comprehensive amended findings of fact and conclusions of law issued September 24, 2003." (Ex. D at 2.)

Pursuant to Rule 102(e)(3)(iv) of the Commission's Rules of Practice, 17 C.F.R. § 201.102(e)(3)(iv), Campbell is precluded from contesting any findings made against him or facts admitted by him in the underlying judicial proceeding. Thus, the district's courts amended findings of fact and conclusions of law[4] discussed throughout the remainder of this Initial Decision are binding upon Campbell.

Solv-Ex Corp.

John Rendall (Rendall) was the principal founder of Solv-Ex Corp. (Solv-Ex), a New Mexico corporation, and was at all relevant times the company's chairman and chief executive officer. (Ex. C at AF 1-2.) Prior to incorporating Solv-Ex, Rendall established a process that utilized solvents to extract bitumen (heavy, low specific gravity crude oil) from oil sands. (Ex. C at AF 1, 3.) In 1979, Rendall patented a process that employed a logwasher, a commonly available piece of equipment, to separate oil from crushed rocks, sand, water, and fine clay residue. (Ex. C at AF 3.)

In 1980, Solv-Ex was formed as a research and development corporation with a purpose to improve and develop technology to process and recover bitumen from oil sands. (Ex. C at AF 1.) Solv-Ex raised several million dollars through initial public and private offerings. (Ex. C at AF 1.) In the 1980s, Solv-Ex built a pilot plant and laboratory in Albuquerque, New Mexico, to develop, test, and improve upon a solvent-assisted hot water process for extracting oil from bitumen. (Ex. C at AF 4.) In 1988, Solv-Ex acquired 100% of the working interest in the Bitumount lease in Alberta, Canada (Lease 5).[5] (Ex. C at AF 5.)

During the time period relevant to the complaint, Solv-Ex was registered with the Commission pursuant to Section 12(g) of the Exchange Act and, thus, was subject to the Exchange Act's periodic reporting requirements. (Ex. C at AC 1-2.) The price of Solv-Ex common stock began increasing in mid-1995, reaching a high of $38 per share in February 1996. It traded between the high $20s and mid-$30s range until late March 1996, when the stock price fell to $7.375 per share following negative television and press reports. Solv-Ex had a capital infusion of more than $70 million shortly before the fluctuations and negative press. 1996 Form 10-K, 1996 Form 10-K/A at

[4] The district court's amended findings of fact, contained in Ex. C will be cited as "(Ex. C at AF ___.)," and the amended conclusions of law as "(Ex. C at AC ___.)."

[5] There is bitumen in the Athabasca sand in the northern region of Alberta, Canada. (Ex. C at AF 3.)

24-25 (official notice).[6] As of June 30, 1996, there were 22,846,649 shares of Solv-Ex stock issued and outstanding. Id. at 31.

Campbell

Prior to joining Solv-Ex, Campbell had raised venture capital for mining companies and worked in other various management positions for such companies. (Ex. C at AF 6.) Campbell joined Solv-Ex in May 1992 as the company's senior vice president and general counsel. (Ex. C at AF 6.) One of his first duties was to satisfy the demands of NASDAQ, which had threatened to suspend the listing for Solv-Ex. (Ex. C at AF 6.) Among other things, Campbell raised capital to build facilities for Solv-Ex's bitumen extraction and its production of minerals from the by-products of the extraction. (Ex. C at AF 6.) Campbell also negotiated and prepared agreements with outside consultants who assisted Solv-Ex in evaluating and developing its processes. (Ex. C at AF 6.)

From 1995 through 1997, Campbell participated in drafting portions of the Solv-Ex's periodic reports. (Ex. C at AF 6.) Campbell signed Solv-Ex's annual report on Form 10-K for the fiscal year ended June 30, 1995, and its Form 10-K and Form 10-K/A for the year ended June 30, 1996, as the company's senior vice president and director (principal accounting officer) (official notice).[7] (Ex. E.) Additionally, Campbell had primary responsibility for drafting press releases and reviewing public statements and he also handled shareholder relations. (Ex. C at AF 6.)

Campbell's Misstatements and Omissions Concerning Solv-Ex's Technologies

The district court determined that:

> This enforcement action involves a pattern of statements issued by a public company and [Campbell and another] key executive officer[] that created the misleading impression that each of three revolutionary new technologies being developed by the company was a virtually unqualified success. The pattern of these statements created in the mind of any reasonable investor the expectation that commercial exploitation of the technologies, each with substantial revenue stream, was not only assured, but would occur in the very near future.

[6] Pursuant to Rule 323 of the Commission's Rules of Practice, 17 C.F.R. § 201.323, this Initial Decision takes official notice of Solv-Ex's annual reports filed with the Commission.

[7] Campbell also signed the 1995 Form 10-K in his capacity as Solv-Ex's secretary. (Ex. E.) The district court noted that Campbell performed the duties of corporate secretary but did not specify the time period during which he performed those duties. (Ex. C at AF 6.)

(Ex. C at AC 4.) In support, the district court in its conclusions of law specifically cited Campbell's material misstatements and/or omissions to the public and in Commission filings regarding Solv-Ex's bitumen extraction or electrolytic cell processes, which are summarized below.[8]

Bitumen Extraction

From February 1995 through December 1996, Solv-Ex operated its bitumen extraction technology only at the laboratory and pilot plant scale.[9] (Ex. C at AF 7.) Solv-Ex began constructing an oil extraction facility on the Lease 5 property in 1996. On March 29, 1997, Solv-Ex attempted its first test of its unproven and experimental equipment at the Lease 5 site. (Ex. C at AF 16, 22, 27, 30-32, 42-43.) During the March 29 test, the logwasher had to be shut down after twelve hours of operation, due to a filtration problem. (Ex. C at AF 44.)

Campbell told Rendall that they should issue a statement because NASDAQ and others were expecting production by the end of March. (Ex. C at AF 44.) Campbell was aware that the filtration problem caused the shutdown and recognized that it would make all prior production predictions completely impossible. (Ex. C at AF 44.) After conversing over the weekend with Rendall, Campbell drafted a press release on March 31, 1997, announcing the commencement of bitumen production at the Lease 5 oil plant and faxed the release to NASDAQ. (Ex. C at AF 44.) Campbell intentionally made this misstatement of material fact. (Ex. C at AF 44, AC 11.)

Solv-Ex continued testing its equipment during April 1997, but it never sustained continuous operation of the logwasher or produced oil at the Lease 5 plant. (Ex. C at AF 48-50, 52.) Commercial exploitation was "never more than a theoretical possibility." (Ex. C at AF 109.)

---

[8] Throughout the amended findings of fact, the district court discusses Campbell's statements concerning three Solv-Ex technologies: bitumen extraction; electrolytic cell; and titanium dioxide substitute. Then, in its amended conclusions of law, whenever the district court concluded that Campbell made material misstatements or omissions, it cited specific paragraphs in the amended findings of fact as support. The paragraphs cited, however, contain no references to Solv-Ex's third technology, its attempts to process a titanium dioxide substitute as a by-product of bitumen extraction. Thus, I cannot infer if any statements regarding this process constituted violations by Campbell. For the purposes of this Initial Decision, the misstatements and omissions cited by the district court in the amended conclusions of law section are sufficient to determine whether a sanction is necessary against Campbell.

[9] The district court stated that "[t]here are three generally accepted steps in the evolution of taking an idea from the drawing board to producing a product or improving upon a process to achieve commercial production." The steps are: (1) the initial discovery, testing, and development of the process or product under controlled laboratory conditions ("bench scale" testing); (2) proving the product or process in an intermediate step, usually using a pilot plant or prototype model; and (3) proving the process or product in a commercial plant. Further, the court stated that "[t]he likelihood of a financially viable project cannot be reliably predicted until the process reaches this third stage." (Ex. C at AF 7.)

Marketability of Bitumen

Even if Solv-Ex had been able to produce bitumen at a commercial level, it was not marketable. In August 1996, Solv-Ex realized that it could not afford a visbreaker, a piece of equipment used to breakdown molecules via thermal processing,[10] so they decided to try to filter the bitumen to produce a coarser product.[11] (Ex. C at AF 10, 22-23.) Solv-Ex performed independent filtration lab work on a reconstituted material, which was made from previously-processed oil sands extracted from a location outside Lease 5. (Ex. C at AF 25.) The results of the tests "[did not] justify the conclusion that Solv-Ex could consistently produce 'readily marketable' bitumen through filtration." (Ex. C at AF 25.)

An August 26, 1996, letter to shareholders, however, contained a statement that Solv-Ex would commence production in early 1997 of "100,000 barrels per month" of "readily marketable" filtered bitumen. (Ex. C at AF 25.) The August 26 letter also stated that Solv-Ex had, through internal and independent testing, determined that it could consistently produce filtered bitumen from Lease 5 without a visbreaker that met the specifications for salable bitumen. (Ex. C at AF 25.) Campbell failed to disclose that they did not have a proven way to filter the bitumen. (Ex. C at AF 26.)

Further, Campbell did not disclose that even if a filtered product could be produced, Solv-Ex had no marketing agreement to sell such a product. (Ex. C at AF 26.) Campbell knew that Solv-Ex's letter of intent with the marketing company, Gibson Petroleum Company, Ltd. (Gibson), required a visbroken product.[12] (Ex. C at AF 10, 26.) Campbell also knew that Solv-Ex had not presented or executed a marketing arrangement for filtered bitumen. (Ex. C at AF 26.) By failing to disclose these material facts, the August 26 letter was misleading and the omissions were attributable to Campbell. (Ex. C at AF 26, AC 14.)

Campbell also made material misstatements and omissions during an October 14, 1996, conference call with Rendall, investors, securities analysts, and broker-dealers. (Ex. C at AF 28, AC 11, 14, 17.) During this phone call, Campbell stated that the bitumen to be produced would meet "commonly accepted specifications, both in terms of contained water and solids." (Ex. C at AF 28.) This statement had no factual basis and was completely unrealistic. (Ex. C at AF 28.) According to the district court, "Campbell's prediction of future events was a material misstatement of fact made without factual support and/or in the face of contradictory and undisclosed factual evidence." (Ex. C at AC 17.) Campbell also failed to disclose that there was no proven technology to filter Lease 5 bitumen or a committed marketer for a filtered product. (Ex. C at AF 28.)

---

[10] Visbreaking is a way to produce a lighter product, such as gasoline, from bitumen. It is a thermal process that breaks down heavy molecules into lighter molecules. (Ex. C at AF 10.)

[11] For the bitumen from oil sands to be salable, it cannot contain more than .5% solids upon separation from the sand, and to be transportable by pipe, the bitumen must be "residue free." (Ex. C at AF 24.)

[12] In June 1995, Solv-Ex had signed a letter of intent with Gibson to enter into a marketing agreement whereby Gibson agreed to market a visbroken product for Solv-Ex. (Ex. C at AF 10.)

Moreover, during a December 3, 1996, conference call, Campbell intentionally made a material misstatement of fact. (Ex. C at AF 33, AC 11.) When asked about a financial commitment from Gibson, Campbell replied that Gibson was "moving forward towards securing equipment for the purpose of moving Solv-Ex's product to market." (Ex. C at AF 33.) This statement was false. (Ex. C at AF 33.) Gibson and Solv-Ex had no marketing agreement and Gibson had not indicated that it was acquiring such equipment. (Ex. C at AF 33.)

Electrolytic Cell

Solv-Ex also attempted to produce minerals and other synthetic products from tailings (commonly known as sludge) generated by oil sands. One by-product extracted from the tailings was aluminum oxide (commonly called alumina). (Ex. C at AF 55-57.) From at least 1994 to 1999, Solv-Ex attempted to make a type of alumina from which metallic aluminum could be produced. (Ex. C at AF 57.) During December 1995 and January 1996, Solv-Ex tested a 2700 ampere pilot cell (pilot electrolytic cell) to determine whether electrolysis could be used to produce metallic aluminum from Solv-Ex alumina at a scale larger than prototype but smaller than industrial level. (Ex. C at AF 88, 90, 93.) However, the heating system failed during a December 1995 test of the pilot electrolytic cell and the experiment was cancelled after forty-eight hours. (Ex. C at AF 90.) In January 1996, Solv-Ex attempted to operate the cell again, but "the test was an unmitigated failure." (Ex. C at AF 93-94.)

As the district court stated, "The December 1995 and January 1996 testing could not be considered 'successful' by any accepted definition of the term." (Ex. C at AF 98.) After testing the pilot electrolytic cell, Solv-Ex was forced to reduce the laboratory tests on the cell back to the laboratory bench scale. (Ex. C at AF 97.)

Campbell made intentional misstatements of fact in connection with Solv-Ex's electrolytic cell process. (Ex. C at AC 11.) For example, Solv-Ex issued a press release on February 26, 1996, drafted by someone else and revised by Campbell. (Ex. C at AF 99.) The press release indicated that the scale up factors from the cell being tested to a new commercial scale were "quite reasonable." (Ex. C at AF 99.) However, this was "a complete distortion of the actual facts as the cell tests were in reality being scaled back to bench scale and not up to production scale." (Ex. C at AF 99.) Further, "Campbell was aware of facts from which he knew or should have known the prototype electrolytic cell lea[k]ed during the January 18, 1996 test, and was not the 'success' he claimed" in the February 26, 1996, press release, and in a prior press release. (Ex. C at AC 20.)

Further, Campbell intentionally made misstatements of material fact in Solv-Ex's 1995 Form 10-K,[13] which contained the following language:

[13] I note that the district court also found that "Solv-Ex's 10-K and amended 10-K for the period end[ed] June 30, 1996 contained misleading statements regarding the status of Solv-Ex's aluminum reduction cell testing and technology." (Ex. C at AF 107.) Since the district court did not cite this statement (as it did others) in its amended conclusions of law, when it concluded that Campbell made material misstatements, it is difficult to discern whether Campbell's securities laws violations and injunction were based on these statements. For the purposes of this decision, there are sufficient material misstatements found by the court in its amended conclusions of law to determine whether a sanction is necessary in this proceeding.

> Work performed . . . at [the] Pilot Plant has resulted in production of alumina which meets specifications for metallurgical grade alumina . . . through standard . . . processes. Evaluation of the Company's process by both independent consultant and sources with the alumina/aluminum industry has confirmed the ability to achieve these results within projected operating costs.
>
> * * * *
>
> Although considerable work must be performed to determine total feasibility of the process (for producing aluminum metal [as opposed to alumina]), the results of testing to date have been very encouraging and the Company has applied for patents with respect to the new process.

(Exs. C at AF 92, AC 11; E) (emphasis in district court decision.) The district court stated that "[t]hese statements were designed to mislead investors as no quantity of alumina was, or could be, produced 'which meets specifications for metallurgical grade' and certainly not through anything approaching 'standard processes.'" (Ex. C at AF 92.) Further, there was no evidence of a confirmation by Solv-Ex or an independent consultant that the above could be done at competitive costs. (Ex. C at AF 92.) The district court concluded that Campbell intentionally made misstatements of material fact in the 1995 Form 10-K. (Ex. C at AC 11.)

Campbell's Scienter

Campbell was "a control person and had access to all of the negative tests and consultants' caveats which he chose to largely ignore in drafting the press releases which created a misleadingly optimistic picture of the prospects for each of the three Solv-Ex technologies." (Ex. C at AC 19.) Further, Campbell knew, or should have known, the information in Solv-Ex's Form 10-K was false or misleading. (Ex. C at AC 20.) Even had his role been limited to that of corporate counsel, Campbell's conduct would have been "recklessly violative of the federal securities laws in that he both knew and was reckless in [failing] to verify erroneous factual statements he drafted." (Ex. C at AC 20.)

Conclusion

Based on his misconduct, the district court found Campbell violated Section 17(a) of the Securities Act, Sections 13(a) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder. The district court concluded that a reasonable likelihood existed that Campbell would engage in future violations and issued a permanent injunction against him. (Exs. A, C.)

CONCLUSIONS OF LAW

Once a petition to lift a temporary suspension has been filed in accordance with Rule 102(e)(3)(ii) of the Commission's Rules of Practice, the Commission may, after opportunity for a hearing, censure, or temporarily or permanently disqualify the petitioner from appearing or

practicing[14] before the Commission. The Commission has the burden to show that a court of competent jurisdiction has permanently enjoined the petitioner from violating or aiding and abetting or found the petitioner to have committed[15] or aided and abetted a violation of any provision of the federal securities laws or the rules and regulations thereunder. The violation must be found, or the injunction must be based on misconduct, in an action brought by the Commission. 17 C.F.R. § 201.102(e)(3)(i)-(iv).

OGC has met its burden by submitting the amended findings of facts and conclusions of law and the final judgment of injunction showing that a district court, in an action brought by the Commission, found Campbell in violation of the reporting and antifraud provisions of the securities laws and, based on its findings, permanently enjoined him from violating those provisions. Campbell acknowledges that he cannot contest the various court orders found in OGC's exhibits. He also argues that he intends to file a motion to re-try the original proceedings pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and to file a Petition for a Writ of Certiorari in the United States Supreme Court. (Response at 1.) The underlying civil action, however, has been finalized for the purposes of this administrative proceeding. See John Francis D'Acquisto, 53 S.E.C. 440, 444 n.9 (1998) ("[T]he pendency of an appeal does not diminish the preclusive effect of a final judgment.").

Following OGC's showing that Campbell was enjoined from and found to have committed violations of the federal securities laws by the district court, the burden shifts to Campbell to show cause as to why he should not be censured or temporarily or permanently disqualified from appearing or practicing before the Commission. See 17 C.F.R. § 201.102(e)(3)(iv). Thus, the only remaining question is if Campbell has shown cause, and if he has not, to determine the appropriate sanction.

SANCTIONS

OGC requests that I permanently disqualify Campbell from appearing or practicing before the Commission. OGC contends that Campbell played a central role in a pattern of misstatements concerning Solv-Ex's ability to produce income. (Motion at 17-19, 21.) According to OGC, the pattern of misstatements was egregious because "it grossly overstated the likelihood that Solv-Ex would generate any income or revenues at all." (Motion at 25.) OGC argues there is a significant risk that Campbell will repeat this misconduct in the future. (Motion at 16.) OGC also contends that the duration of Campbell's misconduct and its impact on investors support permanent disqualification. (Motion at 24-25.) OGC asserts that any disqualification "must be long enough to provide assurance

[14] According to Rule 102(f), "practicing before the Commission" includes, but is not limited to:

> (1) transacting any business with the Commission; and (2) the preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other professional or expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other professional or expert.

[15] There is an exception in Section (e)(3)(i)(B) of Rule 102 if the petitioner was found in violation, but the violation was found not to have been willful. See 17 C.F.R. § 201.102(e)(3)(i)(B).

that an attorney who has committed securities violations in the past will not do so again in the future." (Motion at 16.)

Campbell argues against permanent disqualification, contending that there is nothing in the record to support OGC's claim of egregious conduct. Additionally, the district court imposed a minimum first-tier penalty of $5,000, which Campbell argues does not support a finding of egregious conduct. Although the district court found Campbell was "reckless," he contends there is no support to indicate that he knew the public statements were misleading. (Response at 2.) Campbell also claims that he has been subject to a de facto disqualification since August 10, 2000, due to the temporary suspension order issued by the Commission. This suspension has "served its purpose" and "the existing permanent injunction should be adequate to protect the public interests." Campbell does not intend to practice before the Commission again in the future, but permanent disqualification will be "extremely detrimental to any further practice of commercial law [by him]." (Response at 3.)

In enacting Rule 102(e), the Commission intended "to protect the integrity and quality of its system of securities regulation and, by extension, the interests of the investing public." Amendment to Rule 102(e) of the Commission's Rules of Practice, 63 Fed. Reg. 57,164, 57,165 (Oct. 26, 1998). In Touche Ross & Co. v. SEC, 609 F.2d 570 (2d Cir. 1979), when faced with a challenge to the Commission's authority to promulgate Rule 2(e), the predecessor to Rule 102(e), the United States Court of Appeals for the Second Circuit stated:

> The Commission, through its Rule 2(e) proceeding, is merely attempting to preserve the integrity of its own procedures, by assuring the fitness of those professionals who represent others before the Commission. Indeed, the Commission has made it clear that its intent in promulgating Rule 2(e) was not to utilize the rule as an additional weapon in its enforcement arsenal, but rather to determine whether a person's professional qualifications, including his character and integrity, are such that he is fit to appear and practice before the Commission.

Id. at 579. The court "sustain[ed] the validity of [Rule 2(e)] as a necessary adjunct to the Commission's power to protect the integrity of its administrative procedures and the public in general." Id. at 582.

The Commission's public interest factors are instructive in determining whether a sanction is appropriate under Rule 102(e), which include: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). No one factor is controlling. See SEC v. Fehn, 97 F.3d 1276, 1295-96 (9th Cir. 1996).

Here, Campbell recklessly violated the antifraud and reporting provisions of the securities laws. Campbell's violations were not isolated, but spanned over the period of 1995 through 1997. In fact, there was a "pattern" of misleading statements by Campbell and another key officer, which "created in the mind of any reasonable investor the expectation that commercial exploitation of the

[Solv-Ex] technologies, each with substantial revenue stream, was not only assured, but would occur in the very near future." (Ex. C at AC 4.) Further, Campbell does not recognize the wrongfulness of his conduct in any way and has not offered adequate assurances against future violations. Instead, Campbell merely states that he "does not intend to engage in future practice before the Commission." (Response at 3.) Because he plans to continue practicing commercial law, I am not fully assured that the opportunity to commit securities violations will not be presented to Campbell in the future. Having considered the factors in their entirety, I find that it is in the public interest and necessary to preserve the integrity of the Commission's procedures to permanently disqualify Campbell from appearing or practicing before the Commission.

ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED that the Office of General Counsel's Motion is GRANTED.

IT IS FURTHER ORDERED that, pursuant to Rule 102(e)(3) of the Securities and Exchange Commission's Rules of Practice, Herbert M. Campbell II, Esq., is hereby permanently disqualified from appearing or practicing before the Securities and Exchange Commission.

This order 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 a 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 a motion to correct a 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