

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 60485 / August 12, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13304**

**In the Matter of**

**CentreInvest, Inc.,  
OOO CentreInvest Securities,  
Vladimir Chekholko,  
William Herlyn,  
Dan Rapoport, and  
Svyatoslav Yenin,**

**Respondents.**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-  
DESIST ORDER PURSUANT TO  
SECTIONS 15(b) AND 21C OF THE  
SECURITIES EXCHANGE ACT  
OF 1934 AS TO WILLIAM  
HERLYN**

**I.**

On December 8, 2008, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against CentreInvest, Inc. (“CI-New York”), OOO CentreInvest Securities (“CI-Moscow”), William Herlyn (“Herlyn”), Vladimir Chekholko, Dan Rapoport and Svyatoslav Yenin.

**II.**

In connection with these proceedings, Respondent Herlyn has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Herlyn consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 as to William Herlyn (“Order”), as set forth below.

### III.

On the basis of this Order and Herlyn's Offer, the Commission finds<sup>1</sup> that:

#### **SUMMARY**

1. These proceedings arise out of violations of the broker-dealer registration, reporting, and record-keeping requirements of the Exchange Act by CI-Moscow, a Moscow-based unregistered broker-dealer, and its New York-based affiliate, CI-New York, a registered broker-dealer. From about 2003 through November 2007, CI-Moscow – directly and through CI-New York, Herlyn (its chief compliance officer), and others – solicited institutional investors in the United States to purchase and sell thinly-traded stocks of Russian companies, without registering as a broker-dealer as required by Section 15(a) of the Exchange Act or meeting the requirements for the exemption from registration for foreign broker-dealers under Exchange Act Rule 15a-6(a). In addition, Herlyn was responsible for CI-New York's filing of Forms BD that failed to disclose CI-Moscow's and its executive director's control of CI-New York, or that the license of the CI-New York's parent company had been revoked by the Cyprus SEC.

#### **SETTLING RESPONDENT**

2. **William Herlyn**, age 40, is a resident of Westport, Connecticut, and holds Series 7, 24 and 63 licenses. He was employed by CI-New York from 2003 until October 2008. From June 2006 until October 2008, Herlyn held the title of chief compliance officer. For most of his tenure, Herlyn was also responsible for marketing CI-New York's fee-based research and soliciting U.S. institutional investors.

#### **ENTITY RESPONDENTS**

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

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

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<sup>1</sup> The findings herein are made pursuant to Respondent Herlyn's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## **CI-MOSCOW ACTED AS A BROKER-DEALER BUT FAILED TO REGISTER OR COMPLY WITH AN EXEMPTION FROM REGISTRATION**

5. From about 2003 until at least November 2007, CI-Moscow directly and indirectly solicited investors in the United States to purchase and sell thinly-traded stocks of Russian companies – so-called “second-tier,” or micro-cap, Russian companies – without registering as a broker-dealer, as required by Section 15(a) of the Exchange Act, or meeting the requirements for an exemption.

6. Under CI-Moscow’s direction, employees of CI-New York, including Herlyn, its chief compliance officer, regularly solicited U.S. institutional investors for the purchase and sale of Russian securities. Investors who expressed interest in a transaction were referred to CI-Moscow to complete the transaction.

7. In some cases, employees of CI-Moscow, who were not licensed to sell securities under U.S. law or registered as brokers or dealers under U.S. law and were not exempt from such licensing and registration requirements, solicited U.S. investors directly.

8. CI-New York failed to maintain virtually any records concerning CI-Moscow’s transactions with the U.S. investors.

## **CI-NEW YORK FAILED TO DISCLOSE CI-MOSCOW’S AND ITS EXECUTIVE DIRECTOR’S CONTROL**

9. Throughout the relevant period, CI-New York was under the control of CI-Moscow and, in at least 2006 and 2007, its executive director. CI-Moscow and its executive director controlled CI-New York by, among other things, supervising and directing the staff of CI-New York and controlling its budget and finances. Indeed, CI-New York employees sometimes referred to CI-Moscow’s executive director as their “boss” and to CI-Moscow as CI-New York’s “parent broker-dealer.”

10. CI-New York filed its initial Form BD on July 5, 1999 and subsequently filed numerous amendments. Form BD amendments, signed and filed by Herlyn on behalf of CI-New York during the period June 29, 2006 to December 6, 2007, failed to disclose CI-Moscow’s and its executive director’s control of CI-New York.

11. At the time Herlyn signed these Form BD amendments, he knew that CI-Moscow and its executive director controlled CI-New York by, among other things, supervising and directing the staff of CI-New York and controlling its budget and finances.

## **CI-NEW YORK FAILED TO DISCLOSE THE DISCIPLINARY ACTIONS AGAINST CI-NEW YORK’S PARENT**

12. In Form BD amendments, signed and filed by Herlyn on behalf of CI-New York, the firm inaccurately responded “No” to the question: “Has any other regulatory agency, any state

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

**13.** CI-New York should have answered that question "Yes" because the Cyprus Securities and Exchange Commission suspended the license of CI-New York's Cyprus-based parent on January 11, 2006 and revoked its license on May 26, 2006.

**14.** At the time that Herlyn signed at least some of the Form BD amendments that failed to disclose the regulatory action against CI-New York's Cyprus-based parent by the Cyprus Securities and Exchange Commission, he knew, or at a minimum should have known, of that regulatory action and that CI-New York's Cyprus-based parent was a control affiliate.

### **VIOLATIONS**

**15.** Rule 15a-6(a) of the Exchange Act permits unregistered foreign broker-dealers to effect transactions for U.S. institutional investors in certain limited circumstances, subject to reporting, record keeping and other requirements designed to ensure the protection of U.S. investors. Rule 15a-6(b)(3) defines a "foreign broker or dealer" as "any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker-dealer, whose securities activities, if conducted in the U.S., would be described by the definition of "broker" or "dealer" in Sections 3(a)(4) or 3(a)(5) of the [ Exchange Act ]." Section 3(a)(4) of the Exchange Act defines a "broker" as any person, other than a bank, in certain circumstances, "engaged in the business of effecting transactions in securities for the account of others." A person "effects transactions in securities" if he or she participates in such transactions "at key points in the chain of distribution." Massachusetts Fin. Servs., Inc. v. Security Investor Protection Corp., 411 F. Sup. 411, 415 (D. Mass.), aff'd, 545 F. 2d 754 (1st Cir. 1976).

**16.** As a result of the conduct described above, Herlyn caused CI-Moscow's violations of Section 15(a) of the Exchange Act, which makes it illegal for a broker to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless the broker is registered with the Commission or, in the case of a natural person, is associated with a registered broker or dealer.

**17.** CI-Moscow failed to qualify for any exemption from registration.

**18.** Section 15(b)(1) of the Exchange Act and Rule 15b3-1 require all brokers or dealers applying for registration with the Commission to file a Form BD with the Commission and to correct any information in the Form BD if it is or becomes inaccurate for any reason. Section 17(a) of the Exchange Act requires registered brokers or dealers, among other things, "to make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of [the Exchange Act]." Among other things, Form BD requires registered brokers and dealers to disclose

whether any person not identified as an owner or officer of the broker-dealer “directly or indirectly [has] control [over] the management or policies of the [broker-dealer] through agreement or otherwise.” See, e.g., Alderman v. SEC, 104 F.3d 285, 287 n.1 (9<sup>th</sup> Cir. 1997). “[T]he correct disclosure of the . . . controlling persons of an applicant is more than a ‘minor’ point, indeed it is most important to the proper administration of the [Exchange] Act.” Capital Funds, Inc. v. SEC, 348 F.2d 582, 588 (8<sup>th</sup> Cir. 1968). Form BD also requires registered broker-dealers to disclose whether any foreign financial regulatory authority has “ever denied, suspended, or revoked the applicant’s or a control affiliate’s registration or license or otherwise, by order, prevented it from associating with an investment-related business or restricted its activities.”

**19.** As a result of the conduct described above, Herlyn willfully aided and abetted and caused CI-New York’s violation of Section 17(a) of the Exchange Act and Rule 15b3-1 thereunder.

### **UNDERTAKINGS**

**20. Ongoing Cooperation:** Herlyn undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings brought by the Commission relating to or arising from the matters described in the Order and agrees:

(a) To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission’s staff;

(b) To be interviewed by the Commission’s staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission’s staff; and

(c) That in connection with any testimony of Herlyn to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Herlyn:

i. Agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail, electronic mail, or facsimile on his counsel, George Brunelle, Brunelle & Hadjickow, P.C, 120 Broadway, Suite, 1010, New York, NY, 10271.; and

ii. Agrees that any such notice or subpoena for Herlyn’s appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

**21. Affidavit of Compliance:** Herlyn shall provide to the Commission, within thirty days after the end of the three month suspension described in Section IV.2., below, an affidavit that he has fully complied with the sanctions described in Section IV.2 below.

In determining whether to accept Herlyn’s Offer, the Commission has considered these undertakings.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Herlyn's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

1. Herlyn cease and desist from committing or causing violations and any future violations of Section 15(a) of the Exchange Act, and causing violations and any future violations of Section 17(a) of the Exchange Act and Rule 15b3-1 thereunder;
2. Herlyn be, and hereby is, suspended from association with any broker or dealer for a period of three months, effective on the second Monday following the entry of this Order;
3. Herlyn shall, within thirty (30) days of the entry of this Order, pay a civil penalty in the amount of \$10,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Herlyn as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew M. Calamari, Associate Regional Director, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY, 10281; and
4. Herlyn shall comply with the undertakings enumerated in Section III.21., above.

By the Commission.

Elizabeth M. Murphy  
Secretary