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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
registration under the Securities Act of
Washington of:

Order Number S-16-2093-17-CO01

CONSENT ORDER

VI CAPITAL MANAGEMENT, LLC (CRD
145310) and DAVID W. POINTER (CRD
3275105),

Respondents.

9 THE STATE OF WASHINGTON TO: VI Capital Management, LLC, CRD No. 145310
10 David William Pointer, CRD No. 3275105

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INTRODUCTION

13 Pursuant to the Securities Act of Washington, Chapter 21.20 RCW, the Securities Administrator
14 of the Department of Financial Institutions, Securities Division ("Securities Division") and the
15 Respondents VI Capital Management, LLC and David William Pointer do hereby enter into this
16 CONSENT ORDER in settlement of the matters alleged herein. The Securities Division believes that entry
17 of a Consent Order is in the public interest and is appropriate for the protection of investors.

18

FINDINGS OF FACT

Respondents

19 1. VI Capital Management, LLC (VI Capital), is located in Newman Lake, Washington. It
20 registered as an investment adviser in December 2007 and requested withdrawal of its investment adviser
21 registration in March 2017. The request for withdrawal is pending the outcome of this proceeding. VI
22 Capital's Central Registration Depository (CRD) number is 145310.

23 CONSENT ORDER

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 7. Pointer is the sole manager of VI Capital and makes all decisions on its behalf. VI Capital is
2 VI Fund's sole manager. VI Capital makes all decisions on behalf of VI Fund.

3 8. Approximately 38 clients invested approximately \$6,000,000 in VI Fund. Pointer invested
4 \$600,000, all of his purported investible assets, in VI Fund.

5 9. VI Capital entered into an LP Agreement with each client. The LP Agreement lists VI
6 Fund's investment objective as to achieve above-average long-term appreciation of its capital with below-
7 average levels of risk.

8 10. The LP agreement gives VI Capital discretion in VI Fund, which means that VI Capital
9 buys and sells securities in VI Fund without disclosing the trades before the transaction.

10 11. The LP Agreement stated that VI Capital "must provide each Limited Partner with prior
11 written notice of any engagement or other transaction that might be considered a material conflict of
12 interest with the interests of [VI Fund] or the Limited Partners, in that it might be reasonably expected to
13 affect [VI Capital's] rendering of its duties to [VI Fund] in an unbiased and objective manner."

14 12. The LP Agreement further stated that VI Capital "has the exclusive right and authority to
15 make all management decisions on behalf of the [VI Fund], subject to its fiduciary obligation to the
16 Limited Partners to exercise its authority and to act only in the best interest of [VI Fund] and its Limited
17 Partners, and in compliance with all applicable laws."

18 13. Pointer typically emailed clients a newsletter discussing VI Fund operations about twenty
19 days after each quarter-end.

20 **Failure to Disclose Pointer's Involvement in CompuMed**

21 14. In December 2013 Pointer was appointed to the CompuMed board of directors and on
22 October 30, 2014, Pointer was elected chairman of the board. CompuMed is a pink sheet trade company

1 unrelated to VI Capital. As a member of the board of directors, Pointer had a duty of loyalty to
2 CompuMed. This was a potential conflict of interest and should have disclosed it in writing to VI Capital
3 clients in December 2013.

4 15. Pointer was compensated by CompuMed: in 2014 he received approximately \$4,000; in
5 2015 he received approximately \$6,528; and in 2016 he received approximately \$24,000. Pointer received
6 no compensation from VI Capital in 2015 or 2016 because VI Fund did not obtain the necessary increase
7 in value under the terms of the LP Agreement.

8 16. Pointer's potential conflict of interest became an actual conflict of interest. Being on the
9 CompuMed board of directors, serving as the chairman, having a duty of loyalty to CompuMed, and
10 receiving compensation might reasonably be expected to cause Pointer, either consciously or
11 unconsciously, to render his duties in an unbiased and objective manner. On December 18, 2014, Pointer
12 caused VI Capital to use VI Fund assets to purchase a controlling interest in CompuMed. The purchase
13 represented about a 24% interest in CompuMed and encompassed 9% of VI Fund. At the time of the
14 purchase, CompuMed had accumulated losses of over \$30 million.

15 17. In the transaction, VI Fund received a \$100,000 note and shares of preferred and common
16 stock. The preferred stock has a face value of \$2,000,000. This means that if the CompuMed is ever
17 purchased or liquidated, VI Fund could receive up to \$2,000,000 for the preferred stock if there is any
18 money left after CompuMed's debts are paid. However, VI Fund may never receive any value for the
19 preferred stock.

20 18. The CompuMed shares are illiquid and cannot be easily resold. To liquidate the shares, VI
21 Fund will mostly likely have to find purchaser to buy its entire interest in a private securities transaction.
22 Due to CompuMed's operating loss of \$30 million, high volatility of share price, and the illiquidity of the

1 shares, the investment was inconsistent with the fund's investment objective of achieving "below-average
2 levels of risk."

3 19. VI Capital and Pointer should have given written notice of Pointer's conflict of interest
4 before using VI Fund assets to purchase the controlling interest in CompuMed.

5 20. After the transaction, in a VI Fund quarterly newsletter, Pointer notified his clients that he
6 was on the CompuMed board, that he was chairman of the CompuMed board, and that VI Fund purchased
7 an interest in CompuMed. Pointer had a conflict of interest for a year before VI Fund purchased the
8 CompuMed interest, but did not disclose it in a quarterly newsletter until after the transaction. The
9 notification did not constitute "prior written notice" as required by the LP Agreement and did not contain
10 the necessary full and fair disclosure about Pointer's conflict of interest. For example, the conflict of
11 interest was not disclosed in a manner that allowed his clients to understand the conflict, the risks the
12 conflict of interest created, the number of hours Pointer spent on CompuMed business, the amount of
13 compensation Pointer received from CompuMed, or a statement as to how the conflict of interest would be
14 resolved in the best interest of the advisory clients.

15 **Failure to Disclose Pledge of VI Fund Assets on a CompuMed Line of Credit**

16 21. After VI Capital purchased the CompuMed interest, in November 2015, Pointer was
17 appointed Co-CEO of CompuMed. He spent 20-30 hours a week working in this position. In January 2016
18 a new CEO was appointed and Pointer agreed to continue to assist the new CEO with special projects,
19 including obtaining financing for CompuMed. Pointer received compensation in this role.

20 22. While assisting CompuMed's CEO, Pointer found a bank willing to give CompuMed a line
21 of credit; however, for CompuMed to get the financing, Pointer was required to pledge VI Fund assets as
22 collateral and move VI Capital's accounts to the bank.

1 23. On or about January 20, 2016, Pointer pledged VI Fund assets as collateral on the line of
2 credit for CompuMed and moved its bank accounts without first disclosing the transaction to VI Capital's
3 clients.

4 24. Pointer represented to the Securities Division that the CompuMed CEO told him that
5 CompuMed would not make a withdrawal from the line of credit without notifying Pointer first; however,
6 this alleged agreement was not in writing.

7 25. When VI Fund agreed to pledge its assets as collateral, it also converted a \$100,000 note to
8 CompuMed common stock. The exchange was contrary to VI Fund's investment objective of achieving
9 below average levels of risk. A note is debt and carries less risk than stock. CompuMed was contractual
10 required to pay VI Fund when the note matured. Whereas, common stock is subject to market risk,
11 meaning that the value may go down and that VI Capital may never receive anything in return for the
12 common stock.

13 26. VI Capital had a fiduciary duty to act in the best interest of its clients; pledging VI Fund
14 assets on the line of credit benefited CompuMed by giving it access to needed operating capital while VI
15 Fund assets were at risk of loss.

16 27. VI Capital and Pointer should have given prior written notice of the transaction; however it
17 was not disclosed until after the transaction was complete. The notification of the transaction did not
18 constitute "prior written notice" as required by the LP Agreement and did not contain the necessary full
19 and fair disclosure about the transaction. For example, it did not disclose detailed financial information
20 about CompuMed, general or specific risks of the pledge, or a statement as to how VI Fund's interests
21 would be protected consistent with the adviser's fiduciary duty. The notification did not disclose how long
22 VI Fund assets would be pledged, identification of the fund assets pledged, the value of the assets, the

1 risks, the reason VI Fund assets were being pledged on behalf of CompuMed (a third-party), that the VI
2 Fund assets could be used to repay the line of credit if CompuMed defaulted, that CompuMed was not
3 required to compensate VI Fund in case of a default, and any recourse VI Fund would have in case of a
4 default. It also did not disclose that the general or specific risks of converting the note to shares of
5 common stock, that the ability to have the note repaid on its maturity date, that VI Fund may never receive
6 compensation for the common stock, or that the common stock may decrease in value below the value of
7 the note.

8 **Failure to Disclose the Pledge to the Year-End Auditor**

9 28. In addition to only briefly describing the pledge of VI Fund assets and conversion of the
10 promissory note to VI Capital clients, Pointer failed to disclose the transaction to the auditor during VI
11 Fund's 2015 year-end audit. As a result, clients did not receive disclosure of the transaction as a part of the
12 audit, which would have included material information about the transaction that had not yet been
13 provided.

14 **Failure to Disclose Pointer's Involvement in Solitron**

15 29. On August 4, 2015, Pointer was appointed to the board of directors for Solitron Devices
16 (Solitron) and, on approximately July 22, 2016, was appointed chairman of the board. Solitron is an entity
17 unrelated to VI Capital. As a member of its board of directors, Pointer had a duty of loyalty to Solitron.
18 This was a potential conflict of interest and should have been disclosed to VI Capital clients in August
19 2015.

20 30. Pointer had an expectation of receiving compensation. In 2016 Pointer received
21 approximately \$42,525 from Solitron while he received no compensation from VI Capital.

1 31. Pointer's potential conflict of interest became an actual conflict of interest. Being on the
2 Solitron board of directors, serving as its chairman, having a duty of loyalty to Solitron, and receiving
3 compensation might reasonably be expected to cause Pointer, either consciously or unconsciously, to
4 render advice to VI Fund that is not disinterested. In approximately August 2016, Pointer caused VI
5 Capital to use VI Fund assets to purchase an interest in Solitron. According to the LP Agreement and the
6 fiduciary duty, VI Capital and Pointer should have given prior written notice of his conflict of interest.

7 32. After the transaction, in a VI Fund quarterly newsletter, Pointer notified VI Fund investors
8 that he was chairman of the Solitron board and of the Solitron transaction. Pointer had a conflict of interest
9 for a year before VI Fund purchased the Solitron interest, but did not disclose it in a quarterly newsletter
10 until after the transaction. The notification did not constitute "prior written notice" as required by the LP
11 Agreement and did not contain the necessary full and fair disclosure about Pointer's conflict of interest.
12 For example, the conflict of interest was not disclosed in a manner that allowed his clients to understand
13 the conflict, the risks the conflict of interest created, the number of hours Pointer spent on Solitron
14 business, the amount of compensation received from Solitron, or a statement as to how the conflict of
15 interest would be resolved in the best interest of VI Capital's clients.

16 **Failure to Comply with the Custody Rules**

17 33. In addition to failing to disclose material information, VI Capital failed to comply with the
18 investment advisory custody rules.

19 34. VI Capital has custody of client assets because it is a managing partner to a hedge fund.
20 Investment advisers with custody must either engage an independent party to authorize withdrawals from
21 the fund's account or distribute year-end audited financial statements to its clients within 120 days of the
22 fund's year-end and audited final financial statements upon liquidation of the fund. VI Capital did not

1 engage an independent party to authorize withdrawals from the fund's account and notified the Securities
2 Division that it would comply with the custody rules by distributing audited financial statements.

3 35. VI Fund's year-end was December 31 and the 2016 year-end audited financial statements
4 were required to be distributed to its clients by April 30, 2016.

5 36. Pointer distributed the 2016 year-end financial statements to its clients on or about July 20,
6 2017. This was 201 days after VI Capital's year-end.

7 37. Pointer asserts that the Securities Division's investigation caused a delay in the completion
8 of the audit. Nonetheless, the audit agreement Pointer provided the Securities Division was signed on
9 April 17, 2017 and Pointer was unable to provide evidence to the Securities Division that he entered into
10 an audit agreement prior to that date.

11 38. The final audited financial statements have not yet been distributed.

12 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

13 **CONCLUSIONS OF LAW**

14 1. VI Capital Management and Pointer engaged in deceptive conduct as defined by WAC 460-
15 24A-220(11) and contrary to their fiduciary duty by failing to disclose Pointer's position on the CompuMed
16 board of directors, that he was appointed chairman, and received compensation prior to purchasing the
17 CompuMed controlling interest. Pursuant to RCW 21.20.110(1)(g), such a violation is a basis to enter an
18 order to cease and desist, revoke registrations, deny registrations, restrict registrations, impose a fine, and
19 charge costs.

20 2. VI Capital Management and Pointer engaged in deceptive conduct as defined by RCW
21 21.20.020(1)(b) and WAC 460-24A-220(20) and contrary to their fiduciary duty by pledging VI Fund assets
22 to secure a line of credit for CompuMed without providing prior written notice. Pursuant to RCW

1 21.20.110(1)(g), such a violation is a basis to enter an order to cease and desist, revoke registrations, deny
2 registrations, restrict registrations, impose a fine, and charge costs.

3 3. VI Capital Management and Pointer engaged in deceptive conduct as defined by RCW
4 21.20.020(1)(b) and WAC 460-24A-220(20) by failing to disclose to the 2015 year-end auditor that VI Fund
5 assets were pledged as collateral on a CompuMed line of credit. Pursuant to RCW 21.20.110(1)(g), such a
6 violation is a basis to enter an order to cease and desist, revoke registrations, restrict registrations, deny
7 registrations, impose a fine, and charge costs.

8 4. VI Capital Management and Pointer engaged in deceptive conduct as defined by WAC 460-
9 24A-220(11) and contrary to their fiduciary duty by failing to disclose Pointer's position on the Solitron
10 board of directors, that he was appointed chairman, and received compensation before purchasing the
11 Solitron shares. Pursuant to RCW 21.20.110(1)(g), such a violation is a basis to enter an order to cease and
12 desist, revoke registrations, deny registrations, restrict registrations, impose a fine, and charge costs.

13 5. VI Capital Management and Pointer violated WAC 460-24A-107(1)(b)(ii) by failing to
14 timely distribute audited 2016 year-end financial statements and a final fund audit. Pursuant to RCW
15 21.20.110(1)(b), such a violation is a basis to enter an order to revoke registrations, deny registrations,
16 restrict registrations, impose a fine, and charge costs.

17 **CONSENT ORDER**

18 Based upon the foregoing and finding it in the public interest:

19 IT IS AGREED AND ORDERED that Respondents will cease and desist from violating the
20 Securities Act.

1 IT IS FURTHER AGREED AND ORDERED that the investment adviser registration of
2 Respondent VI Capital LLC and the investment adviser representative registration of David Pointer be
3 revoked.

4 IT IS FURTHER AGREED AND ORDERED that for a period of 10 years from the date of the
5 entry of this Consent Order, David Pointer may not be a principal, officer, or owner of an investment
6 adviser or broker-dealer.

7 IT IS FURTHER AGREED AND ORDERED that Respondent David Pointer may apply for a
8 securities salesperson or investment adviser representative registration. Before approval of the
9 application his sponsoring firm must provide the Securities Division with an acceptable plan of
10 supervision that addresses monitoring his use of discretion in client accounts and custody of client funds
11 or securities. Such plan must be in place for at least two years and the Securities Division must be
12 notified before the plan is modified or terminated.

13 IT IS FURTHER AGREED AND ORDERED that Respondents shall be liable for and shall pay a
14 fine of \$10,000.

15 IT IS FURTHER AGREED AND ORDERED that Respondents shall be liable for and shall pay
16 costs of \$2,500.

17 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent
18 Order.

19 IT IS FURTHER AGREED that Respondents enter into this Consent Order freely and voluntarily
20 and with full understanding of its terms and significance.

21 IT IS FURTHER AGREED that in consideration of the foregoing, Respondents waive their right to
22 a hearing and to judicial review of this matter pursuant to RCW 21.20.440 and Chapter 34.05 RCW.

1 **AUTHORITY AND PROCEDURE**

2 This Order is entered pursuant to the provisions of chapter 21.20 RCW and is subject to the
3 provisions of RCW 21.20.120 and Chapter 34.05 RCW. The Respondents have been notified of their right
4 to an administrative hearing and have waived her right to a hearing.

5 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

6
7 SIGNED this 4th day of March, 2018.

8 Signed by:

9
10 /s/
11 DAVID POINTER, CRD 3275105
12 Individually and as Managing Member of
13 VI CAPITAL MANAGEMENT, LLC, CRD 145310

14 SIGNED and ENTERED this 12th day of March, 2018.



15
16 *William M. Beatty*

17 WILLIAM M. BEATTY
18 Securities Administrator

19 Approved by:

20 Presented by:

21 *Suzanne Sarason*

22 *Kristen Standifer*

23 Suzanne Sarason
24 Chief of Enforcement

25 Kristen Standifer
Financial Legal Examiner

CONSENT ORDER