

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 3565/February 1, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-16989

In the Matter of

VINAY KUMAR NEVATIA

ORDER DIRECTING SUPPLEMENTAL  
BRIEFING

On December 8, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondent Vinay Kumar Nevatia pursuant to Securities Exchange Act of 1934 Section 15(b).

Nevatia was served with the OIP on December 11, 2015. *Vinay Kumar Nevatia*, Admin. Proc. Rulings Release No. 3458, 2016 SEC LEXIS 8 (Jan. 4, 2016). On January 4, 2016, I ordered Nevatia to show cause why this proceeding should not be determined against him due to his failure to file an answer or otherwise defend the proceeding. *Id.* I further ordered that if Nevatia failed to show cause, the Division of Enforcement should file a motion for sanctions by January 29, 2016, providing legal authority and evidentiary support relating to the OIP's allegations and the Division's requested sanctions, in accordance with *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 SEC LEXIS 1657 (Apr. 23, 2015). *Id.* On January 29, 2016, the Division submitted a motion for remedial relief and six exhibits.

The Division's motion and exhibits do not contain sufficient evidence to establish the statutory requirements under Exchange Act Section 15(b)(6) or to support a public interest analysis. The motion primarily relies on a paragraph in the OIP that begins with "[t]he Commission's complaint [in the underlying case] alleged that . . .," as factual support for its statutory and public interest analysis. However, because the underlying case was resolved by default, I may not rely on the facts alleged in the underlying complaint, which lack the necessary preclusive effect. *See Gary L. McDuff*, 2015 SEC LEXIS 1657, at \*3.

Exchange Act Section 15(b)(6) authorizes the Commission to determine whether a sanction is in the public interest if two statutory requirements are met: (i) the respondent is associated, is seeking to become associated, or, at the time of the alleged misconduct, was associated or was seeking to become associated with a broker or dealer, and (ii) the respondent meets at least one of several potential bases for a proceeding, including that respondent has been enjoined in connection with the purchase or sale of any security or from acting as a broker or dealer. *See* 15 U.S.C. § 78o(b)(4), (6). While the Division has put forth evidence that Nevatia

has been enjoined from violating certain securities laws, it has not put forth sufficient evidence that Nevatia is associated, is seeking to become associated, or, at the time of the alleged misconduct, was associated or was seeking to become associated with a broker or dealer. Although the Commission has given preclusive effect to substantive findings that have *accompanied* the entry of default, the Division has not pointed to any such findings. *Gary L. McDuff*, 2015 SEC LEXIS 1657, at \*8.

Moreover, if the statutory requirements are met, in order to determine what sanction is in the public interest I must consider the following factors: 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 assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The evidence that the Division has submitted is insufficient for me to conduct such an analysis. The report and recommendation that the Division submitted as Exhibit 4 to its motion is overwhelmingly a recitation of facts alleged in—with citations to—the complaint, rather than independent, substantive findings by the court. The remaining exhibits also fail to shed sufficient light on the *Steadman* factors to enable me to conduct a thorough public interest analysis.

Accordingly, I ORDER that the Division provide supplemental briefing on the following:

1. Whether Nevatia is associated, is seeking to become associated, or, at the time of the alleged misconduct, was associated or was seeking to become associated with a broker or dealer.
2. Each *Steadman* factor noted above, as applied to Nevatia.

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Cameron Elliot  
Administrative Law Judge