

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

In the Matter of

VINAY KUMAR NEVATIA

INITIAL DECISION OF DEFAULT

June 7, 2016

APPEARANCE: William T. Salzman for the Division of Enforcement,  
Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

### Summary

Respondent Vinay Kumar Nevatia fraudulently sold other persons' securities worth over \$600,000, and pocketed the proceeds. This initial decision grants the Division of Enforcement's motion for remedial relief and permanently bars Nevatia from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, associational bar).

### Procedural Background

On December 8, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Nevatia, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The OIP alleges that on November 9, 2015, a judgment was entered against Nevatia, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in *SEC v. Nevatia*, No. 14-cv-5273 (N.D. Cal.) (*Nevatia*). OIP at 2.

Nevatia was served with the OIP on December 11, 2015, in accordance with 17 C.F.R. § 201.141(a)(2)(iv). *Vinay Kumar Nevatia*, Admin. Proc. Rulings Release No. 3458, 2016 SEC LEXIS 8 (ALJ Jan. 4, 2016). Nevatia did not file an answer to the OIP, and on January 4, 2016, I ordered him to show cause by January 15, 2016, why this proceeding should not be determined against him, and ordered the Division to file a motion for sanctions by January 29, 2016, if Nevatia failed to answer. *Id.* Nevatia did not respond to that order and on January 29, 2016, the Division filed its motion for remedial relief and six exhibits (Mot. and Mot. Exs. 1-6). Because *Nevatia* was resolved by default and no substantive findings independent of the complaint were made by the court, I ordered the Division to provide supplemental briefing on the issue of

Nevatia's association with a broker-dealer and the six public interest factors in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *Vinay Kumar Nevatia*, Admin. Proc. Rulings Release No. 3565, 2016 SEC LEXIS 347 (ALJ Feb. 1, 2016). On March 28, 2016, the Division filed its supplemental brief in support of its motion and four declarations.<sup>1</sup> This proceeding will be determined upon consideration of the record, including the OIP, the facts of which are deemed true,<sup>2</sup> the Division's exhibits, and other underlying documents from *Nevatia*, officially noticed pursuant to Rule of Practice 323. *See* 17 C.F.R. §§ 201.155(a), .323; *Robert Bruce Lohmann*, 56 S.E.C. 573, 583 n.20 (2003) (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions").

### Findings of Fact

Nevatia, aged forty-seven at the time the OIP issued, resided in Palo Alto, California from 2004 through 2013, and is currently a fugitive in the United Arab Emirates (UAE). OIP at 1; Karasik Decl. ¶¶ 6-7. From approximately 2007 through 2013, Nevatia solicited real estate and securities investments through numerous entities owned or controlled by him, including KBR Capital Markets, LLC, KBR Capital Partners, Inc., KBR Capital Partners, LLC, and KBR Fund, LP. OIP at 1. Since at least September 2012, Nevatia has been the owner of KBR Capital Markets, LLC, a California limited liability company registered with the Commission as a broker-dealer from March 2004 through August 2014. *Id.* at 1-2; Supp. Salzman Decl. Ex. 2 at 9 & Ex. 5 at 53.

In August 2008, Nevatia raised money from eight investors to purchase shares of CSS Corp. Technologies (Mauritius) Limited. Govindaswami Decl. ¶¶ 4-6; *see* Gupta Decl. ¶ 2. These eight investors and Nevatia purchased 179,900 CSS shares through VRSBS Investment, LLC, an entity formed by Nevatia for the purpose of buying and holding the shares, for \$899,500.<sup>3</sup> Govindaswami Decl. ¶¶ 6, 8 & Ex. A at 1, 19-21. The eight investors and Nevatia

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<sup>1</sup> The four declarations are of: (1) Rajiv Gupta, (2) Shivkumar Govindaswami (attaching six exhibits), (3) David Karasik, and (4) the supplemental declaration of William T. Salzman (attaching forty-four exhibits).

<sup>2</sup> Because *Nevatia* was resolved by default, paragraph three of the OIP, which begins with "[t]he Commission's complaint alleged that," is immaterial. *See Gary L. McDuff*, Exchange Act Release No. 74803, 2015 SEC LEXIS 1657, at \*3 (Apr. 23, 2015). That paragraph of the OIP is also superfluous, because the allegations of the complaint may be officially noticed, whether immaterial or not. *See* 17 C.F.R. § 201.323.

<sup>3</sup> Although VRSBS's operating agreement indicates that the members purchased 179,900 shares for \$188,895, in a declaration, VRSBS investor Shivkumar Govindaswami represented that "[d]ue to an error, the dollar amounts listed on [the operating agreement] are less than the actual amounts ultimately invested by myself and the other VRSBS members, but the percentage interests were accurate. The VRSBS members ultimately paid \$5 per CSS share acquired, and not \$1.05." Govindaswami Decl. ¶¶ 6, 8 & Ex. A at 19-20. Accordingly, the VRSBS members paid a total of \$899,500 for those shares, not \$188,895. Govindaswami Decl. ¶ 6. In both the

agreed that while the shares were held under the name of VRSBS, the rights to the shares were directly proportional to the amount of money that each member had contributed to the shares' purchase. Gupta Decl. ¶ 9; Govindaswami Decl. ¶ 8 & Ex. A at 19-20. Although Nevatia owned only 2.72% of the CSS shares held by VRSBS, he served as the VRSBS manager. Govindaswami Decl. Ex. A at 17, 19. The VRSBS operating agreement provided that VRSBS funds would not be commingled with those of any other person, and that in the event of a potential sale of CSS shares, Nevatia was required to provide the other members with a description of the material terms of the sale. *Id.* at 3, 11-12.

In November 2011, without notifying the VRSBS members, Nevatia resold half of the VRSBS members' CSS shares to several partners of Sierra Ventures, a venture capital firm. Supp. Salzmam Decl. Ex. 16 at 9-10, 23, 28 & Ex. 18; Govindaswami Decl. ¶¶ 20, 21; *see* Gupta Decl. ¶¶ 12-13. Nevatia misrepresented to the Sierra partners that the CSS shares were his own, and that there were no restrictions on the shares. Supp. Salzmam Decl. Ex. 16 at 17, 19 & Ex. 18 at 2. On November 23, 2011, the partners wired a total of \$359,800 in payments to a bank account under Nevatia's control—with no connection to VRSBS—per Nevatia's instructions to Sierra's CFO, Martha Clarke-Adamson. Supp. Salzmam Decl. Ex. 15 at 15, 66 & Ex. 16 at 23 & Ex. 17 at Ex. 1 & Exs. 20-24. Nevatia did not transfer any of the sale proceeds to VRSBS's bank account, nor did he share the funds with the other VRSBS members. Govindaswami Decl. ¶ 24; *see* Gupta Decl. ¶¶ 2, 4. When the Sierra partners requested the stock certificates for the shares they purchased, Nevatia claimed he was waiting for CSS to reissue new certificates for each partner because he only had one certificate, when in reality the VRSBS members possessed the original certificates. Supp. Salzmam Decl. Ex. 15 at 58 & Ex. 25; Gupta Decl. ¶ 10; Govindaswami Decl. ¶¶ 12-13.

In February 2012, Nevatia sold an additional 25,000 CSS shares to certain Sierra partners for \$100,000, and sold 60,000 CSS shares to a private equity fund in Asia for \$195,000. Supp. Salzmam Decl. Exs. 26-27. Nevatia again represented that he personally owned the CSS shares. Supp. Salzmam Decl. Ex. 16 at 58. Nevatia arranged for the Sierra partners to wire the money to his own account, with no association to VRSBS. Supp. Salzmam Decl. Exs. 28-29, 42. Although Nevatia arranged for the private equity fund to wire the money to VRSBS's account, within a week he transferred all but \$500 to his own accounts. Supp. Salzmam Decl. Ex. 17 at Ex. 1. Nevatia did not inform the VRSBS members of the sales, nor did he share the proceeds with them. Gupta Decl. ¶¶ 12-16; Govindaswami Decl. ¶¶ 21, 24.

The Sierra partners continued to ask Nevatia for the stock certificates on various occasions, but Nevatia "would not respond or [would say] he had requested them or they are in the mail, or 'I'll drop them by.'" And then ultimately, he didn't have them." Supp. Salzmam Decl. Ex. 15 at 131 & Exs. 25, 30-32. The Sierra representatives became frustrated and reached out directly to CSS's transfer agent, who responded that he could not issue the certificates because he had "not yet received the original share certificates which need to be cancelled from [Nevatia]." Supp. Salzmam Decl. Ex. 33. On September 10, 2012, Nevatia sent the transfer agent a signed document entitled "Indemnity For Lost Share Certificates," representing that the

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current and underlying proceeding, the Division used \$899,500 as the correct figure. Supp. Br. at 9; Div. Mot. Ex. 4 at 12 & Exs. 5-6.

original certificates had been lost. Supp. Salzmänn Decl. Exs. 34. The transfer agent then issued new stock certificates in the Sierra partners' names on September 11, 2012. Supp. Salzmänn Decl. Ex. 35.

Nevatia took several steps to conceal from the VRSBS members the fraudulent sales of the shares, before, during, and after the sales took place. When the resale was in the final stages, Nevatia assured VRSBS investors that he was in the process of obtaining new certificates issued in the individual VRSBS investors' names. Supp. Salzmänn Decl. Ex. 36; *see* Govindaswami Decl. Ex. A at 19. Moreover, on June 23, 2013, Nevatia misrepresented to VRSBS members who were interested in selling their shares that he would look for potential purchasers, despite the fact that he had sold the shares over nine months prior. Govindaswami Decl. ¶ 15 & Ex. C. On June 24, 2013, Nevatia also misrepresented to VRSBS members that they would be receiving dividend payments from CSS. *Id.* ¶ 16 & Ex. D. Not surprisingly, none of the VRSBS members received the dividend. *Id.* ¶ 17.

Following Nevatia's failure to deliver on his promises, in July 2013 some of the VRSBS members reached out to CSS and learned that Nevatia had fraudulently sold nearly all of their CSS shares without their knowledge or approval. *Id.* ¶¶ 18, 20 & Ex. E. As a result, that same month, the VRSBS members replaced Nevatia with Govindaswami as the managing member. *Id.* ¶ 19 & Ex. E; Supp. Salzmänn Decl. Ex. 37. In August 2013, the VRSBS members confronted Nevatia about the sales and Nevatia denied having sold the shares, representing that he had merely "transferred" them to the Sierra partners to "protect them from his divorce settlement," with the understanding that the proceeds would be paid to VRSBS members. Govindaswami Decl. ¶ 22 & Ex. F; Gupta Decl. ¶ 14. Nevatia further misrepresented that "no reps and warranties . . . [or] original or replacement share certificates were provided to [the Sierra partners] by me." Govindaswami Decl. Ex. F. That same month, Nevatia promised VRSBS member Gupta that he would transfer 90,000 shares back to him, and in the next two months confirmed that "the transfer would happen soon." Gupta Decl. ¶¶ 14-15. Nevatia never transferred any shares back to Gupta. *Id.* ¶ 15. Since late 2013, Nevatia has not responded to VRSBS members' efforts to contact him, nor have the Sierra partners heard from him. Govindaswami Decl. ¶ 23; Gupta Decl. ¶ 16; *see* Supp. Salzmänn Decl. Ex. 16 at 136. Nevatia thereafter fled to the UAE, and in 2014 and 2015, he was detained on grounds of fraud and illegal residency. Karasik Decl. ¶¶ 5, 6. On April 14, 2015, Nevatia was sentenced in the UAE to one-month in jail, to be followed by deportation. *Id.* ¶ 7. Currently, Nevatia is "at large." *Id.*

In total, Nevatia deposited \$654,300 of VRSBS funds into his own personal account. Supp. Salzmänn Decl. Ex. 17 at Ex. 1. Subtracting from that amount Nevatia's 2.72% interest in VRSBS's \$899,500 investment, Nevatia misappropriated approximately \$629,800 of VRSBS funds. Govindaswami Decl. ¶ 6 & Ex. A at 19; Supp. Salzmänn Decl. Ex. 17 at Ex. 1.

In October 2015, a federal magistrate judge issued a report in the *Nevatia* proceeding, recommending that the district court grant the Commission's motion for default judgment against Nevatia based on his failure to answer the Commission's complaint or otherwise appear in the action; and finding that the Commission's complaint adequately stated claims that Nevatia had violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Mot. Ex. 4. On November 9, 2015, the district court adopted the magistrate

judge's report and entered a judgment by default against Nevatia, enjoining him from "any further violation of the securities laws," and ordering disgorgement of \$701,013.94 (which includes prejudgment interest) and a civil penalty of \$629,800. Mot. Exs. 5-6.

### **Conclusions of Law**

Exchange Act Section 15(b)(6) authorizes the Commission to impose an associational bar against Nevatia if: (1) at the time of the alleged misconduct, he was associated or seeking to become associated with a broker or dealer; (2) he has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C); and (3) the sanction is in the public interest. 15 U.S.C. §78o(b)(6)(A)(iii).

The district court enjoined Nevatia from "any further violation of the securities laws." Mot. Ex. 6. Based on the OIP's allegations, which are deemed true, and the claims alleged in *Nevatia*, which encompass Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, I find that Nevatia was enjoined from conduct in connection with the purchase or sale of any security. OIP at 2; *see* 15 U.S.C. § 78o(b)(4)(C). During the time of his misconduct, Nevatia owned and controlled KBR Capital Markets, LLC, a registered broker-dealer. OIP at 1-2; Salzmann Decl. Ex. 2 at 9 & Ex. 5 at 53. An associated person of a broker-dealer includes "any partner, officer, director . . . of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling . . . such broker or dealer." 15 U.S.C. §78c(a)(18). Accordingly, Nevatia was associated with a broker-dealer at the time of the misconduct. A sanction will therefore be imposed on Nevatia if it is in the public interest.

### **Sanction**

The Division seeks an associational bar against Nevatia. Mot. at 7; Supp. Br. at 21. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC*, namely: the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at \*22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). "The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive." *Gary M. Kornman*, 2009 SEC LEXIS 367, at \*22 (alteration in original and internal quotation marks omitted). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003). Associational bars have long been considered effective deterrence. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at \*81 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

After analyzing the public interest factors in light of the protective interests served, Nevatia's current competence, and the risk of future misconduct, I find that it is appropriate and in the public interest to bar Nevatia from participation in the securities industry to the fullest extent possible. See *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at \*7-8 (Mar. 7, 2014). Nevatia's conduct was highly egregious. After enticing the VRSBS members to purchase CSS shares, Nevatia fraudulently sold their shares without their knowledge, misappropriating \$629,800. To accomplish his fraudulent scheme, Nevatia deceived many people along the way, both orally and in writing, including the VRSBS investors, the Sierra Partners he sold shares to, and the CSS transfer agent. Nevatia abused the trust that the VRSBS members placed in him, as the managing member, to represent their interests. Violations involving the antifraud provisions of the federal securities laws are especially serious and merit the severest of sanctions. *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at \*23 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Marshall E. Melton*, 56 S.E.C. at 713.

Nevatia's conduct was recurrent; after he illicitly resold the CSS shares in November 2011 and February 2012, he continued to deceive VRSBS members and the Sierra partners about the status of the CSS shares and certificates through 2013. Nevatia also acted with a high degree of scienter. In perpetrating his fraud over nearly two years, Nevatia repeatedly misled those around him, and, specifically, made representations and warranties to the Sierra partners and CSS's transfer agent about the CSS shares that he knew were false and contravened the VRSBS operating agreement. Even after he had resold the shares, when confronted by the VRSBS members, Nevatia denied having done so and instead continued his deception and made promises he knew he could not fulfill. Nevatia ultimately stopped responding to VRSBS members' efforts to contact him, and then fled to the UAE. Nevatia neither participated in this proceeding nor the underlying one, and has thus offered no assurances against future violations or shown that he recognizes the wrongful nature of his conduct. Given Nevatia's past occupation in the securities industry and as the owner of several securities entities, including a formerly registered broker-dealer, it is likely that Nevatia will have opportunities for future violations.

Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference that it will be repeated.'" *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at \*23 n.50 (July 26, 2013) (alteration in internal quotation omitted) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). Nevatia has offered no evidence to rebut that inference. Absent an associational bar, Nevatia would be permitted to resume activities within the securities industry, which would present opportunities for future violations and the risk that his conduct will be repeated. "Each area of the industry covered by the [associational] bar presents continual opportunities for similar dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence." *Ross Mandell*, 2014 SEC LEXIS 849, at \*22 (internal quotation marks and alteration brackets omitted); see *Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976) ("When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this necessitates specialized legal treatment." (internal footnote omitted)). If Nevatia does reenter the industry, his egregious misconduct shows both a lack of current competence and that the risk of future violations is significant.

In conclusion, it is in the public interest to impose a permanent associational bar against Nevatia.

### **Order**

It is ORDERED that the Division of Enforcement's motion for remedial relief against Vinay Kumar Nevatia is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Vinay Kumar Nevatia is permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 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. *See* 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 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 occurs, the initial decision shall not become final as to that party.

Nevatia may move to set aside the default in this case. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.*

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Cameron Elliot  
Administrative Law Judge