UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15936

In the Matter of

CHRISTOPHER A.T. PEDRAS (a/k/a CHRIS PEDRAS a/k/a ANTONE THOMAS PEDRAS),

Respondent.

MOTION BY DIVISION OF ENFORCEMENT FOR A FINDING THAT RESPONDENT CHRISTOPHER A.T. PEDRAS IS IN DEFAULT AND FOR IMPOSITION OF REMEDIAL SANCTIONS; DECLARATION OF KAREN MATTESON; EXHIBITS

I. BACKGROUND

On June 18, 2014, the Securities and Exchange Commission issued an Order Instituting Proceedings ("OIP") in this matter pursuant to Section 15(b) of the Securities Exchange Act of 1934. The OIP alleges that from at least July 2010 until the Commission filed an injunctive action seeking emergency relief on October 28, 2013, Respondent Christopher A.T. Pedras ("Pedras") offered and sold securities in unregistered offerings based on materially false representations and omissions without being registered as a broker, in furtherance of a Ponzi scheme by which more than $5.6 million was raised from over fifty United States investors; and that a final judgment by default was entered against Pedras on June 10, 2014, permanently enjoining him from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5(b) thereunder, in *SEC v. Pedras*, No. 2:13-cv-07932 (C.D. Cal.).

Pedras was in New Zealand at the time the Commission filed its injunctive action against him. As explained in the accompanying Declaration of Karen Matteson ("Matteson Dec."), the United States Attorney's Office for the Central District of California previously informed the Division of Enforcement ("Division") that Pedras had left New Zealand, and had relocated to the nation of Tonga. (Matteson Dec. ¶ 2.) During the week of December 1, the United States Attorney's Office informed the Division that the petition by the Department of Justice to remove Pedras from Tonga had been denied by Tonga, and that it was therefore proceeding to attempt to extradite him. (*Id.*)

Because Pedras has not been in the United States during the pendency of this proceeding, and the Division did not have a current address for him, the Office of the Secretary was unsuccessful in serving Pedras by certified mail, as contemplated by Rule 141(a).[1] Accordingly, the Division served Pedras on September 3, 2014, by sending him a copy of the OIP by email, a method of service previously authorized by the district court in the injunctive action. (Matteson Dec. ¶ 3 & Ex. 1 (email and attachment).) As explained below, the Division believes that this method of service comports with the requirements of Rule 141(a)(2)(iv), which permits service upon persons in foreign countries by, among other methods, "any... method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country." Pedras was thus required to file an Answer with the Commission no later than

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[1] A Postponement Order was issued on September 3, 2014, because Pedras had not yet been served with the OIP. The prehearing conference, set for September 26, 2014, was accordingly postponed until December 19, 2014, "to allow time for service of the OIP and Pedras's Answer." Administrative Proceedings Rulings Release No. 1751. As explained, the Division has now served Pedras by email. Because the Division has filed this motion, and the undersigned counsel will be out of the office on leave on December 19, the Division respectfully requests that the prehearing conference be taken off calendar.

September 23, 2014, pursuant to Rule 220(b), as explained in the Division's email to him. He has failed to do so.

The Division accordingly now moves for a finding that Pedras is in default, and imposition of remedial sanctions. In this case, the Division requests that Pedras be barred from associating with a broker or dealer, and be collaterally barred from associating with an investment adviser, municipal securities dealer, municipal adviser, transfer agent, nationally recognized statistical rating organization (NRSRO), or investment company, or participating in an offering of penny stock. Previously, Judge Elliot imposed these sanctions against Alicia Bryan, Pedras' co-defendant in the injunctive action, after she defaulted after being personally served. *In the Matter of Alicia Bryan*, Administrative Proceeding File No. 3-15937, Initial Decision Release No. 697 (Initial Decision of Default, October 22, 2014). Those sanctions were based upon the same default judgment in the injunctive action which forms the basis for the Division's motion for such relief to be imposed against Pedras. (Matteson Dec. Ex. 2 (Final Judgment); Ex. 3 (Memorandum & Order Regarding Motion for Default Judgment).) The Division requests, pursuant to Rule of Practice 323, that official notice be taken of the Initial Decision in *Bryan*, which is part of the official records of the Commission.

II. ARGUMENT

A. Pedras Has Failed to Answer After Being Properly Served, and Is in Default

Because Pedras has never responded to the OIP, he is in default. Rule 155(a) of the Commission's Rules of Practice states that:

> A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: ...
> (2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding . . . .

Moreover, the OIP itself provides that "If Respondent fails to file the directed answer . . . the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true . . . ." OIP at p. 3.

Pedras was properly served with the OIP and is on notice of these proceedings. Rule of Practice 201.141(a)(2)(iv) sets forth permissible methods of service of the OIP upon persons in a foreign country:

> ***Upon persons in a foreign country.*** Notice of a proceeding to a person in a foreign country may be made by any method specified in paragraph (a)(2) of this section, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

Because the Division did not and does not have a current address for Pedras, it was unable to serve Pedras pursuant to the methods specified in Rule 141(a)(2)(i) governing service upon individuals. Accordingly, the Division opted to serve Pedras at his last known email addresses. (Matteson Dec. ¶ 3; Ex. 1 (email).) Although two of the email addresses are apparently no longer used by Pedras, the OIP was delivered to the third email box. (*Id.*)

The Commission faced the same service issue with regard to Pedras when it filed its action in district court seeking emergency relief. Like Rule 141(a)(2)(iv), Fed. R. Civ. P. 4(f)(3) permits service on individuals in foreign countries by various means, including "by other means not prohibited by international agreement, as the court orders."[2] Accordingly, the Commission sought

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[2] In contrast, Rule 141(a)(2)(iv) does not appear to require an order for the Division to serve respondent by alternative means because he is located in a foreign country, although the Division often seeks such an order, particularly when it is seeking service by publication, which can be quite expensive. At least one ALJ appears to have acknowledged that the Division may, without a specific order, attempt to serve a respondent in a foreign country with the OIP by alternative means. *See In the Matter of Alchemy Ventures, Inc.*, Administrative Proceedings Rulings Release No. 702, 2012 SEC LEXIS 1311, **4-5 & 13-14 (April 27, 2012) ("in sharp contrast to the practice in the district courts, there is apparently no remedy for failure to properly serve a respondent in an administrative proceeding – *the Division* just has to keep trying to serve

the permission of the district court to serve Pedras by email. As explained in its brief in support of a temporary restraining order ("TRO") and other emergency relief, service by email was appropriate because New Zealand is not a signatory to the Hague convention, and no international agreement prohibits email service in New Zealand. (Matteson Dec. Ex. 4 (Memorandum) at 18-19.) *See Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007, 1017-18 (9th Cir. 2002) (affirming district court order of email service upon foreign corporation, finding it was reasonably calculated to provide notice and the most likely means of notifying the defendant of the lawsuit). Here, Pedras routinely communicated with United States investors using email, so email is reasonably calculated to provide notice. (*See* Matteson Dec. Ex. 4 at 18.) The district court agreed; it explicitly ordered in the TRO, amended TRO and preliminary injunction that the Commission could effect service on Pedras by email of all filings in that action. (Matteson Dec. Ex. 5 (TRO) at 11 ¶ XI; Ex. 6 (Amended TRO) at 12 ¶ XI; Ex. 7 (Order of Preliminary Injunction) at 13 ¶ X.)

The Division requests that Pedras be found to be in default. He was served by email consistent with Rule 141(a)(2)(iv), in that this method was "reasonably calculated to give notice" – the same standard governing the district court's approval of service by email. *See Rio Properties, Inc.* 284 F.3d at 1017-18; *see also In the Matter of Rapoport*, 2011 SEC LEXIS 231 *18 n.29 (Commission Order Denying Motion to Set Aside Default Order, January 20, 2011) (due process

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him" [emphasis supplied]; listing several documented attempts by the Division to serve the respondent, including by email to two addresses, and directing that service on respondent's counsel "is reasonably calculated to give notice" and complies with Rule 141(a)(2), but leaving the "exact method of service" to "the Division's discretion"). On the other hand, Commission Rule 141(a)(2)(i), which more narrowly specifies the means of service permitted on persons located in the United States, has been construed not to permit service of OIPs by alternative means on such persons. *See In the Matter of Chalmers*, Administrative Proceedings Rulings Release No. 1845, 2014 SEC LEXIS 3580 (September 24, 2014). The strictures of that rule do not apply to service on foreign respondents, as is clear from the language of Rule 141(a)(2)(iv).

requires that respondent have notice of the pendency of the proceeding and an opportunity to respond). Official notice of the district court's orders approving email service in the district court action may and should be taken in this proceeding pursuant to Rule 323.

Rule 141(a)(2)(iv) also requires that the method of service used is not prohibited by law of the foreign country. As set forth in its Memorandum filed in the district court action, email service is not prohibited by international agreement. (Matteson Dec. Ex. 4 at 18.) A review of the website for the Department of State also confirms that New Zealand is not a party to the Hague Service Convention; the Department of State "does not currently have any country specific information on Tonga regarding judicial assistance." (Matteson Dec. ¶ 10 & Ex. 8 (Department of State website pages).) The burden is not on the Division, however, to show that email service is consistent with the law of New Zealand, Tonga, or any other country in which Pedras was located when the Division emailed the OIP. *Rapoport*, 2011 SEC LEXIS 231 *18 n.29. The Division has nevertheless obtained information that neither New Zealand nor Tonga are parties to the Hague Service Convention, and that email service does not appear to violate New Zealand law, and is not aware of information to the contrary. (*See* Matteson Dec. ¶¶ 10-11.) the Division was unable to locate a Tonga governmental website which it could search regarding Tonga law concerning service of process. (*Id.* ¶ 11.)

B. Imposition of a Permanent Bar Is Appropriate

There are several well-recognized factors that are to be considered in determining the appropriate remedy in the public interest in proceedings seeking to bar a respondent. Those factors are: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infractions; (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 or her

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); *In the Matter of Sandru*, 2013 SEC LEXIS 2346, *19 (Initial Decision, August 12, 2013) (*Steadman* factors used to determine whether a bar is in the public interest, where sanctions were imposed by default).

All of the *Steadman* factors are present in this case. First, the allegations of the OIP are deemed true when a respondent fails to timely answer and is in default. *See Sandru*, 2013 SEC LEXIS *3. Those allegations include that a final judgment by default was entered on June 10, 2014, in a district court action brought against Pedras, permanently enjoining him from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder in *SEC v. Pedras*. (OIP ¶ 3.) The factors weighed for entry of an injunction are identical to the *Steadman* factors. *See SEC v. Murphy*, 526 F.2d 633, 655 (9th Cir. 1980). The district court weighed those factors in determining that injunctive relief was appropriate against Pedras. (*See* Matteson Dec. Ex. 3 (Memorandum & Order Regarding Motion For Default Judgment) at 17-18.) Applying collateral estoppel principles, Pedras is precluded from contesting any findings made against him in the civil injunctive action. *See In the Matter of Grosnickle*, 2011 SEC LEXIS 3969 * 4 (November 10, 2011) (Initial Decision), *citing In the Matter of Gunderson*, Exchange Act Release No. 61234, 97 SEC Docket 24040, 24047, SEC LEXIS (Dec. 23, 2009).[3]

With regard to the underlying violations, the OIP alleges that from at least July 2010 until the Commission filed its injunctive action on October 28, 2013, Pedras, through five different U.S. and New Zealand-based entities of which he was an owner, officer and/or director, offered and

[3] Because Pedras cannot contest the facts found by the district court, the Division's motion for imposition of sanctions could alternatively be treated as a motion for summary disposition, with the same result.

sold securities in unregistered offerings based on materially false representations and omissions without being registered as a broker, in furtherance of a Ponzi scheme by which more than $5.6 million was raised from over fifty United States investors. (OIP ¶ 3.) Among other false representations, Pedras told investors that the Maxum Gold Trade Program was a "low risk" investment with returns ranging between 4-8% per month and claimed investor funds would be placed in escrow to facilitate a bank trade program. (*Id.*) When Pedras was unable to pay the promised returns, he began promoting the FMP Renal Program to Maxum Gold Trade Program investors, falsely claiming, among other things, that the new program would instantaneously increase the value of Maxum Gold investors' investments by approximately 80%. (*Id.*) In fact, neither program was real; instead, they were a Ponzi scheme. (*Id.*) Pursuant to the Ponzi scheme, Pedras paid out more than $2.4 million in investor "returns" directly out of investor funds, misappropriated nearly $2 million in cash, cars, retail purchases and transfers to and from his related companies, and caused $1.2 million to be paid in sales commissions to a network of sales agents. (*Id.*)

These same facts were found by the district court.[4] In particular, the Court found that Pedras, the "lead sales representative," falsely represented the nature of the investments in two specific phases. (Ex. 3 (Memorandum & Order) at 4.) First, Pedras and the other defendants pitched the "Maxum Gold" investment program as a "low risk" investment with 4-8% monthly returns, when it was nothing more than a Ponzi scheme. (*Id.* at 4-5.) Second, after Pedras and the

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[4] The district court made its findings based not only on facts alleged in the Commission's Complaint, but also noted that the facts were "supported by evidence produced by Plaintiff [Commission] in these proceedings." (Ex. 3 (Memorandum & Order) at 3:15-3:16.) In particular, the Commission presented evidence in support of its application for a temporary restraining order and preliminary injunction filed simultaneously with its Complaint. Official notice may and should be taken of the documents filed in *SEC v. Pedras* pursuant to Rule of Practice 323. *See Bryan* at 2.

other defendants had difficulty making the promised payouts, they began offering the FMP Renal Program, backing New Zealand kidney dialysis clinics, to investors who had already bought into the Maxum Gold Program. (*Id.* at 4.) Victims were told they could increase the value of their Maxum investments by 80% overnight if they invested in this new program. (*Id.*) None of the Defendants' investment promises were true. (*Id.*) Neither investment program was real. (*Id.*) Of the $5.6 million raised, Pedras and the other defendants returned $2.4 million as "investment returns," and paid over $1.2 million in commissions to a small network of sales agents. (*Id.*) Defendant Pedras appropriated nearly $2 million in cash, purchases, and transfers to his related companies. (*Id.*) Neither the instruments associated with the Maxum Gold Program nor the FMP Renal Program were registered with the Commission. (*Id.*)

The district court further specifically found that Pedras engaged in the sale or offer of securities for both the Maxum Gold and FMP Renal Programs, that the investment offerings were not registered with the Commission, and that the Defendants, including Pedras, accordingly violated Sections 5(a) and 5(c) of the Securities Act. (*Id.* at 9.) Similarly, the Court found that the Defendants made several affirmative misrepresentations in violation of the antifraud provisions, and that Pedras falsely represented that money would be used for investments, "when instead it was diverted directly to Pedras' pockets." (*Id.* at 10.) The district court also specifically found that Pedras acted with scienter, because he knew that he was using false offering and marketing materials to solicit investors. (*Id.*) Finally, the Court found that Pedras violated the requirement of Exchange Act Section 15(a) that he be registered as a broker when he directly solicited investors for the Maxum and FMP Renal Programs, recruited sales agents in order to promote the programs, and paid the sales agents commissions, without being registered with the SEC or associated with a registered broker. (*Id.* at 11.)

As explained, the factors weighed for entry of an injunction under *SEC v. Murphy* are identical to the *Steadman* factors, and the district court weighed those factors in determining that injunctive relief was appropriate against Pedras. (*See* Ex. 3 (Memorandum & Order) at 17-18.) The district court noted that a permanent injunction is particularly appropriate where a violation is "founded on systemic wrongdoing rather than an isolated occurrence," or "involved a 'high degree of scienter,'" finding that the Defendants' violations – including Pedras's – met this criteria. *Id., citing SEC v. Berger*, 244 F. Supp.2d 180, 193 (S.D.N.Y. 2001).

Pedras has not acknowledged his wrongdoing, nor made any assurances, much less reasonable ones, that he will not violate the registration and antifraud provisions in the future.

Because all of the *Steadman* factors are present, it is in the public interest to impose a bar which not only precludes him from associating with any broker or dealer, but a full collateral bar precluding him from associating with any securities professional, and from participating in any offering of a penny stock.

III. CONCLUSION

For the reasons stated, Pedras should be barred from association with any broker, dealer, investment advisor, municipal securities dealer, municipal advisor, transfer agent, NRSRO, or investment company, as well as from participating in an offering of penny stock.

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Respectfully submitted,

Karen Matteson
Senior Trial Counsel
Division of Enforcement
Los Angeles Regional Office
Securities and Exchange Commission
444 South Flower Street, Suite 900
Los Angeles, CA 90071
(323) 965-3840
mattesonk@sec.gov