UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19720

In the Matter of

DANIEL B. VAZQUEZ, SR.,

Respondent.

DIVISION OF ENFORCEMENT'S SUPPLEMENTAL BRIEF AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR ENTRY OF DEFAULT JUDGMENT AND REMEDIAL SANCTIONS

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COMMISSION'S RULES OF PRACTICE

Pursuant to the January 5, 2022 Order in this matter, Exch. Act Release No. 93912 (Jan. 5, 2022), the Division of Enforcement ("Division") submits this supplemental brief and authorities in support of its motion for default judgment and sanctions against Respondent Daniel B. Vazquez, Sr. ("Vazquez" or "Respondent").

I. INTRODUCTION

Vazquez is the founder and CEO of Hoplon Financial Group ("Hoplon"). The Commission's complaint in the underlying district court action alleged that Vazquez committed fraud with the assistance of Hoplon's COO. In 2011, Vazquez and Hoplon created the New Economic Opportunities Fund I, LLC ("NEON") vehicle to pool investors' funds, ostensibly for the purpose of purchasing and flipping residential real estate. Vazquez then misused substantial amounts of investor funds, resulting in a total loss to investors. By engaging in this conduct, Vazquez committed violations of Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

The instant proceedings were commenced on March 3, 2020 based upon the entry of a final judgment against Vazquez, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder in the civil action entitled *Securities and Exchange Commission v. Daniel Vazquez, et al.*, Civil Action Number 8:18−cv−0047 CJC (KESx), in the United States District Court for the Central District of California. *See* Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 ("OIP") Exch. Act. Rel. 88314 (March 3, 2020).

Pursuant to SEC Rule of Practice 141(a)(2)(iii), the OIP was served on Respondent. Vazquez did not file an answer, and thus is in default. Accordingly, the Division moves, pursuant to Rules 155(a)(2) and 220(f) of the SEC's Rules of Practice, for a finding that Vazquez in default and for the imposition of remedial sanctions. The Division specifically requests that

the Commission issue an order barring Vazquez from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

II. FACTS

A. Respondent

Vazquez is last known to have resided in Orange Park, Florida. Declaration of Lynn M. Dean ("Dean Decl.") ¶ 8. He is the founder and CEO of Hoplon and NEON, and has held Series 7, 9, 10, 23, 31, 63, and 65 qualifications in the past. *Id.*, Ex. 1, OIP at ¶ A.1. Vazquez held a California insurance license, which became inactive when it expired in July 2016 and was revoked in January 2017. *Id.* From 1998 through 2016, Vazquez was associated as a registered representative with a series of broker-dealer firms, Vazquez voluntarily resigned from his last firm on or around May 12, 2016, shortly after FINRA notified him of an open investigation involving his firm, Hoplon. *Id.* Vazquez failed to provide requested documents to FINRA and, effective September 12, 2016, FINRA permanently barred Vazquez from associating with any FINRA member in any capacity. *Id.*

B. Entry of the Injunction

On December 11, 2019, a final judgment was entered against Vazquez, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder in the civil action entitled *Securities and Exchange Commission v. Daniel Vazquez, et al.*, Civil Action Number 8:18−cv−0047 CJC (KESx), in the United States District Court for the Central District of California. *Id.*, Ex. 1, OIP at ¶ B.1; Ex. 3.

C. Vazquez Committed Fraud

Vazquez committed fraud with the assistance of Hoplon's COO. In 2010, shortly after Hoplon was launched, Vazquez established the NEON fund, under the management of Hoplon, to pool investor funds to buy, refurbish, and resell homes. Supplemental Dean Declaration

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("Supp. Dean Decl.") Exs. 2 (Fluetsch Test. 135:3-21); 5 (NEON PPM at GF0003642). Vazquez was NEON's CEO. *Id.* at Ex. 6 at GF000003674. According to the PPM, NEON would use the proceeds of the offering to purchase discounted residential real estate properties which it would then renovate, lease, or sell. *Id.,* Ex. 5 (NEON PPM at GF00003648). Neither Vazquez nor Fluetsch were to receive a salary from NEON. *Id.,* Ex. 6 at GF 00003674. Instead, the offering documents set forth a fee structure that provided an annual management fee payable to Hoplon and acquisition fees when new investment property was purchased. *Id.* at Ex. 1 (Cyr Test. 91:2-11); Ex. 5 at GF00003650; Ex. 6 at GF00003673. The operating agreement specified that Hoplon would pay its own operating costs. *Id.* at Ex. 6 at GF00003687.

Between 2011 and 2014, Vazquez raised approximately $2.18 million from 27 individual investors. Conte Decl. ¶ 4. NEON began purchasing real estate in mid-2012. Supp. Dean Decl. at Ex. 4; Ex. 2 (Fluetsch Test. 162:3-163:4). The properties were purchased in NEON's name. *Id.* at Ex. 2 (Fluetsch Test. 147:9-13). A construction crew headed by an acquaintance of Vazquez's performed any work deemed necessary before the property was resold. *Id.* at Ex. 2 (Fluetsch Test. 150:6-153:10). All of the costs associated with this process were paid for with NEON investor funds. *Id.* at Ex. 2 (Fluetsch Test. 158:7-159:14). Once a property was sold, the proceeds were to be paid to NEON. *Id.* at Ex. 2 (Fluetsch Test. 153:7-17).

Contrary to the representations regarding how investor funds would be used, Vazquez and the COO began misappropriating NEON investor funds starting as early as mid-2011. NEON funds were used to make cash payments to Vazquez, to pay Hoplon's company credit card bill, which routinely included items of a personal nature, such as sports club memberships, and to pay Vazquez's personal credit cards. *Id.* at Ex. 23 and Ex. 2 (Fluetsch Test. 289:4-11); and Ex. 3 (Fluetsch Test. 433:16-435:12); Declaration of Christopher Conte ("Conte Decl."), ¶¶ 3-4; Ex. 2. Finally, NEON funds were used to pay for $59,000 in renovations to Vazquez's home. Supp. Dean Decl. at Exs. 8 and 2 (Fluetsch Test. 183:17-185:10); Conte Decl., ¶ 4, Ex. 2.

Vazquez diverted a total of $494,842 of investor money to himself. Conte Decl., ¶ 4, Ex. 2. Vazquez and the COO were the sole signatories on Hoplon's and NEON's bank accounts,

including the account where NEON investor funds were deposited, and therefore the only individuals able to authorize transfers out of the NEON account. *Id.* at Exs. 7; 9-23; and 2 (Fluetsch Test. 43:18-23).

In 2015, a number of NEON investors began asking Vazquez to withdraw their NEON investments. Declaration on Patricia Pei, ¶¶ 2-5. One investor asked for a partial withdrawal to pay for the medical bills of an immediate family member. *Id.* at ¶ 2. Another asked for the money in order to finance some renovations to his home. *Id.* at ¶ 3. Vazquez responded to some investors with a series of excuses for why he was unable to return the money. *Id.* at ¶¶ 2-5. To others, he simply never responded at all. *Id.* at ¶ 5. With the exception of one small payment of purported profits to a single investor, none of the NEON investors ever received any profits or principal back from NEON or Hoplon. Pei Decl. ¶ 4; Conte Decl. ¶ 5. As of January 2018, the NEON and Hoplon accounts had less than $1000 in them, resulting in near total loss to investors. Conte Decl. ¶ 5; Supp. Dean Decl. Exs. 24-25.

By engaging in this conduct, Vazquez committed violations of Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

D. Vazquez Is in Default

The instant proceedings were commenced on March 3, 2020 based upon the entry of a final judgment against Vazquez, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder in the civil action entitled *Securities and Exchange Commission v. Daniel Vazquez, et al.*, Civil Action Number 8:18−cv−0047 CJC (KESx), in the United States District Court for the Central District of California. *Id.* ¶ B.1.

The OIP was served on Respondent by sending a copy of the OIP addressed to Respondent's last-known addresses in accordance with Commission Rule of Practice 141(a)(2). Respondent did not appear or respond to the OIP. At the time these proceedings were

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commenced, Vazquez was incarcerated in a Federal Bureau of Prisons ("BOP") facility located in Adelanto, California. Although the Division has confirmation that the OIP was delivered to the prison, the Division was unable to obtain confirmation that Vazquez personally received the OIP. Dean Decl., ¶ 2.

The Declaration of Lynn M. Dean details the Division's efforts to locate Respondent in transitional housing and immediately after his release. *Id.* at ¶¶ 3-6. Ultimately, Division counsel spoke to David Vazquez, Respondent's brother, by telephone, but Mr. Vazquez declined to provide contact information for Respondent. *Id.* at ¶ 7. He did agree to pass him a message, but Respondent did not contact Division counsel. *Id.*

A database search run by the Division in September 2021 located a new address associated with Respondent that was provided by a utility company in Orange Park, Florida. *Id.* at ¶ 8. On September 22, 2021, the Division served the OIP by certified U.S. postal mail, return receipt requested, at the address in Orange Park, Florida. *Id.* On September 29, 2021, the Division received delivery confirmation for service of the OIP. *Id.* at ¶ 9.

On October 29, 2021, the Commission issued an Order to Show Cause ordering Vazquez, by November 12, 2021, to show cause why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and to otherwise defend this proceeding. Order, Exch Act. Rel. No. 93481 (Oct. 29, 2021). The Order further directed that if Vazquez failed to file a response, the Division should file a motion for default and other relief by December 10, 2021. *Id.* Vazquez did not appear or respond to the OSC. Dean Decl. ¶ 10.

III. ARGUMENT

A. Vazquez Is in Default and the Allegations of the OIP May Be Deemed to Be True

Because Vazquez has not responded to the OIP, he is in default. Rule 155(a) of the SEC's Rules of Practice states:

> 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 . . . .

17 CFR § 201.155(a). Moreover, the OIP itself provides: "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 . . . ." Dean Decl. Ex. 1 (OIP at p. 3).

The Commission has already made findings that Vazquez was properly served with the OIP, and has failed to answer. *See* Order to Show Cause, Exch. Act. Rel. No. 93481 (Oct. 29, 2021). Under Rule 155(a), the allegations of the OIP may thus be deemed to be true and the Commission may determine the proceedings against the party upon consideration of the record, including the OIP. 17 CFR § 201.155(a).

B. Imposition of a Permanent Bar Is Warranted

Based on the record here and in the underlying action, the Division respectfully requests that sanctions be imposed under Section 15(b)(6) of the Exchange Act. That section provides in relevant part:

> With respect to any person who is associated, . . . or, at the time of the alleged misconduct, who was associated . . . with a broker or dealer, . . . the Commission, by order, shall censure, place limitations on the activities or functions of such a person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer

agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and an opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person – . . .

***

(iii) is enjoined from any action, conduct or practice specified in subparagraph (C) of such paragraph (4)" of Section 15(b).

Thus, Section 15(b)(6) authorizes the Commission to impose an associational bar against a respondent if: (1) at the time of the alleged misconduct, he was associated with a broker; (2) he is enjoined from any action, conduct or practice specified in Section 15(b)(4)(C); and (3) a bar is in the public interest. Each of these factors is easily met here.

1. At the Time of the Misconduct, Respondent Was Associated with a Broker

As to the first factor, from 1998 through 2016, Vazquez was associated as a registered representative with a series of broker-dealer firms. Dean Decl. Ex. 1, OIP at ¶ A.1. Vazquez voluntarily resigned from his last firm on or around May 12, 2016, shortly after FINRA notified him of an open investigation involving his firm, Hoplon. *Id.* Effective September 12, 2016, FINRA permanently barred Vazquez from associating with any FINRA member. *Id.*

2. The District Court Enjoined Vazquez against Violations of the Securities Laws

The second element under Section 15(b)(6) is also established by the record in the underlying district court action, because Respondent was enjoined from conduct specified in Section 15(b)(4)(C). The acts enumerated under Section 15(b)(4)(D) include willful violations of the Securities Act, the Exchange Act or any rules or regulations under such statutes. Here, the district court permanently enjoined Respondent from violating Section 17(a) of the Securities Act

of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. *See* Dean Decl., Ex. 1, OIP at ¶ B.1.

3. A Bar Is in the Public Interest

Finally, the record establishes that a bar is in the public interest. In determining whether an administrative sanction is in the public interest, the Commission considers a number of factors, including (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (3) the sincerity of the respondent's assurances against future violations; (4) recognition of wrongful conduct; and (5) the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 81 (1981); *Lonny S. Bernath*, Initial Dec. Rel. No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (Apr. 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest). The district court found that all of these factors weighed in favor a permanent injunction against Vazquez. Dean Decl. Ex. 2.

As to whether a bar is appropriate in a follow-on proceeding, "[t]he existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry*." Michael V. Lipkin and Joshua Shainberg*, Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006), *notice of finality*, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

a. Respondent's violations were egregious, intentional and recurrent

The first three *Steadman* factors are met here. As previously noted, in the underlying district court action, the Court found that Vazquez violated the law and that his conduct was "serious and egregious." Dean Decl. Ex. 2, at p. 8. Further, Respondent's fraud was not an isolated incident. Instead, he participated in a scheme to defraud over a number of years and misappropriated approximately a half million dollars of investor money for his personal use. Supp. Dean Decl. Exs. 2-8; Conte Decl. ¶¶ 2-5; Pei Decl. ¶¶ 2-5. Finally, Vazquez acted with scienter. Vazquez was the principal of Hoplon and NEON and generally controlled their

operations, including controlling the bank accounts that held investor funds. Supp. Dean Decl. Exs. 5-7, 9-23. Vazquez was therefore aware that he was misappropriating investor funds. Conte Decl. ¶¶ 2-5. In sum, *the* egregiousness and extent of Respondent's fraud clearly favor a bar under *Steadman*.

b. The remaining *Steadman* factors also favor a bar

The remaining Steadman factors also favor a bar. To begin, Respondent has failed to appear and provide any assurance against future violations or recognition of his wrongful conduct. Dean Decl. ¶ 10. The "absence of recognition by [a respondent] of the wrongful nature of his conduct" favors a permanent bar. *Jonathan D. Havey, CPA*, Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522, at *11 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *Siming Yang*, Initial Dec. Rel. No. 788, 2015 SEC LEXIS 1735, at *10 (May 6, 2015) (noting, as part of grant of summary disposition and imposing of permanent bar in follow on proceeding to civil injunction, that, "[c]onsistent with a vigorous defense of the charges, [respondent] ha[d] not recognized the wrongful nature of his conduct"); *Delsa U. Thomas and The D. Christopher Capital Management Group, LLC*, Initial Dec. Rel. No. 205, 2014 SEC LEXIS 4181, at 24 (Nov. 4, 2014) (imposing permanent bar and revoking adviser's registration on summary disposition following civil fraud injunction, noting that "Respondents do not recognize the wrongful nature of their conduct. Instead, they deny any culpability, insist that none of their conduct was inappropriate, and accuse the Commission and the Commission's witnesses of bias or lying"); *Terrence O'Donnell*, Initial Dec. Rel. No. 334, 2007 SEC LEXIS 2148, at *14 (Sept. 20, 2007) (weighing in favor of bar respondent's "protest" that the securities laws were not sufficiently clear, finding this "evidence that [respondent] still seeks to minimize his misconduct"); *Steadman*, 603 F.2d at 1140.

In addition, the final *Steadman* factor considers "the likelihood that the respondent's occupation will present future opportunities for violations." Although the Division lacks evidence

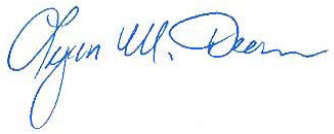
of Vazquez's current employment, the other *Steadman* factors strongly favor the imposition of the bar, which is in the public's interest.

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that Respondent be barred from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

February 4, 2022

Respectfully submitted,



Lynn M. Dean (323) 965-3245
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In the Matter of Daniel B. Vazquez, Sr.
Administrative Proceeding File No. 3-19720
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. §201.151), I certify that the attached:

DIVISION OF ENFORCEMENT'S SUPPLEMENTAL BRIEF AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR ENTRY OF DEFAULT JUDGMENT AND REMEDIAL SANCTIONS

was served on February 4, 2022, upon the following parties:

Vanessa Countryman, Secretary (By eFAP only)
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090

Mr. Daniel B. Vazquez, Sr. (By UPS Overnight)
[redacted]

Lynn M. Dean