UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21011

In the Matter of **KARINA CHAIREZ,** **Respondent.**	**DIVISION OF ENFORCEMENT'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR ENTRY OF DEFAULT AND REMEDIAL SANCTIONS**

The Division of Enforcement ("Division") submits this supplemental brief in support of its motion for entry of default and remedial sanctions against Respondent Karina Chairez, as directed by the Commission's Order dated March 13, 2024 ("Order"). In that Order, the Commission stated that it would benefit from further development of the evidentiary record, including materials from the criminal proceeding against Respondent, such as transcripts of the change of plea and sentencing hearings and any sentencing memoranda the parties may have submitted to the court. In addition, the Commission requested the Division to address each statutory element of the relevant provisions of Section 15(b) of the Exchange Act, the relevant authority relating to the legal basis and appropriateness of the requested sanctions and to include evidentiary support sufficient to make an individualized assessment of whether the requested sanctions are in the public interest.[1]

[1] In determining whether remedial sanctions under Section 15(b) of the Exchange Act are in the public interest, the Commission considers the following non-exclusive list of factors: (1) the egregious of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the

OS Received 04/12/2024

I. Respondent's guilty plea to wire fraud demonstrates she was a knowing participant in a fraudulent pyramid scheme.

On January 31, 2023, Respondent pled guilty to a superseding indictment charging her with wire fraud, in violation of 18 U.S.C. § 1343, and money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i). *United States v. Karina Chairez*, Case No. 1:20-cr-00398-GBD (S.D.N.Y.) Declaration of Donald Searles in Support of Division's Supplemental Briefing Re Remedial Sanctions ("Searles Decl.") Ex. 1 (Crim.Dkt. 33: Superseding Indictment). With respect to the wire fraud count, the grand jury charged that from at least September 2015 through July 2020, Respondent, using interstate wire communications, willfully and knowingly conspired with others to fraudulently induce investor victims to invest money in Airbit Club by falsely promising those investors guaranteed returns on their investments. *Id.* (Dkt. No. 33, ¶ 1).

The essential elements of wire fraud are: (1) a scheme to defraud; (2) money or property as the object of the scheme; and (3) use of wire communications to further the scheme. *SEC v. Hansen*, No. 13-CV-1403 (VSB), 2017 U.S. Dist. LEXIS 50392, at *13 (S.D.N.Y. Mar. 31, 2017). To assert a scheme to defraud, the government must establish: "the existence of a scheme to defraud, (ii) the requisite scienter (or fraudulent intent) on the part of the defendant, and (iii) the materiality of the misrepresentations." *Id*., quoting *United States v. Pierce*, 224 F.3d 158, 165 (2d Cir. 2000).

---

degree of scienter involved, the sincerity of respondent's assurances against future violations; (4) the respondent's recognition of the wrongful nature of her conduct; and (5) the likelihood that respondent's occupation will present opportunities for future violations. Order at 1, citing *Steadman v. SEC*, 603 F. 2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds 450 U.S. 91 (1981). "The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is controlling." *In the Matter of David E. Ruskjer,* AP File No. 3-15147, Initial Decisions Rel. No. 489, 2013 U.S. Dist. LEXIS 1582, at *10 (Jun. 3, 2013).

It is well settled that a defendant's guilty plea admits all of the elements of the formal criminal charge. *McCarthy v. United States*, 394 U.S. 459, 466 (1969); *Hayle v. United States*, 815 F.2d 879, 881 (2d Cir. 1987); *see also*, *United States v. Smith*, 407 F.2d 33, 35 (2d Cir. 1969) ("a plea of guilty admits all facts well pleaded"); *United States v. Monti*, 168 F. Supp. 671, 673 (E.D.N.Y. 1958) (same). As such, Respondent's guilty plea establishes that Respondent, over the course of several years, knowingly and with the intent to defraud (*i.e.*, with scienter), engaged in a scheme to defraud investors in AirBit Club by falsely promising investors guaranteed returns on their investments.

In her plea allocution, Respondent admitted that she had participated in a Ponzi scheme. As she stated, in her own words:

> Your Honor, within the time period of September 2015 to the end of 2018, I agreed with others to assist in a scheme to defraud others of their money through my participation …. in AirBit Club. I helped recruit people to invest in AirBit Club by doing things such as attending conferences, sending emails, making telephone calls and participating in promotional videos that were available on the internet. In essence, the AirBit Club was a Ponzi scheme that I, along with others, convinced unsuspecting individuals to invest in. In the course of these actions, I committed money laundering by accepting cash from unsuspecting investors and then conveying the cash to the AirBit Club leadership in a way that avoided an electronic bank trail so as to obscure the location, source, ownership and control of the collected money. This also promoted the scheme by transferring the money to the AirBit Club leadership. While I did not join the AirBit Club knowing that it was an illegal Ponzi scheme, at a certain point I did realize the illegal nature of

the AirBit Club, and yet I continued recruiting investors, and I knew at that point my actions were wrong and against the law.

Searles Decl. Ex. 2 (Crim. Dkt. No. 175 at p. 11 of 16). Respondent further acknowledged that investors believed that they were investing in Bitcoin, and that at the time she committed her acts she knew that what she was doing was both wrong and illegal. *Id*. at p. 13 of 16.

In addition to Respondent's guilty plea, Respondent submitted a sentencing memorandum to the district court. Searles Decl. Ex. 3 (Crim. Dkt. No. 249).[2] In that sentencing memorandum, Respondent's counsel made the following statements regarding Respondent's conduct:

- that within months of joining the AirBit Club, she realized it was not a legitimate investment club, but decided to "go with the flow and keep making money through AirBit Club even though she knew by then it was not a legitimate operation." *Id*., at p. 3 of 18.
- Respondent joined AirBit Club in 2016, initially as a member-investor, and was promised a fixed daily return on any money she invested, and additional returns for each new investor she recruited, as well as additional returns for any new investors they recruited. *Id*., at p. 9 of 18.
- Respondent was invited by AirBit Club leadership to become a member of the "Master Council," where she attended publicity events at hotel and other spaces to "extoll the benefits of joining AirBit Club." *Id*., at p. 9 of 18..

[2] Defense counsel's statements on behalf of Respondent made in her sentencing memorandum and at her sentencing are admissible against Respondent as vicarious admissions under Rule 801(d)(2)(D) of the Federal Rules of Evidence. *See, e.g., Bay Area Handling v. United States Trustee (In re Bay Area Material Handling)*, 1996 U.S. App. LEXIS 2272 (9th Cir. 1996) (collecting cases).

- In late 2016, Respondent was invited by AirBit Club leadership to travel to Panama to see the actual office and computer systems involved in AirBit Club's purported Bitcoin mining and trading. "After being shuttled all around, it became apparent [to Respondent] that there was no Bitcoin operation in Panama as touted by the AirBit Club leadership." *Id.*
- Respondent continued to participate with AirBit Club, knowing its leadership was not being truthful with investors, until 2019. *Id*., at p. 1 & 10 of 18.
- By 2018, the web portal that AirBit Club members accessed their accounts [to obtain their "guaranteed returns"] was "down for maintenance" at greater and greater frequency and for longer and longer time periods." *Id.*, at p. 10 of 18.
- In October 2018, Respondent confronted Rodriguez [one of AirBit Club's founders] about the webportal always being down and how people were complaining about not being able to withdraw their money. Two months later Rodriguez expelled Respondent from AirBit Club. *Id.*

Consistent with her sentencing memorandum, Respondent's counsel made the following statements at Respondent's sentencing hearing concerning Respondent's knowledge that she was a promoter of a pyramid scheme:

> She figures out within about a year, give or take a few months, so either end of 2016 or end of 2017, is when she's like, all right, this has been too good to be true; this isn't right. And at that point, she knew that they're making money by having the new investors come in and then getting those returns from that new money coming in. And that really came home to her when she took this trip to Panama at the behest of the leaders to see the operation for the Bitcoin mining. And

basically they're driven around all day long and never taken to see this stuff, the equipment. And she realized this was bogus ….. and she made the wrong decision -- to double down and to keep being involved, at that point knowing, yeah, this is wrong. And that's why she's guilty. And she continued to do that for months.

Searles Decl., Ex. 4 (Crim. Dkt. 277 (Sentencing Transcript), at p. 36 of 51).[3] At her sentencing, Respondent also addressed the court and expressed her remorse for the harm she had caused to AirBit Club investors. *Id*., at p. 46 of 51.

II. Respondent's conduct warrants remedial sanctions under Section 15(b) of the Exchange Act.

Based on Respondent's guilty plea and related admissions made in connection with her sentencing, and for all the reasons stated in its Motion for Default and Remedial Sanctions, 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,

[3] Respondent pled guilty to the indictment, without a plea agreement. Searles Decl. Ex. 4 (Crim. Dkt. No. 277, at p. 39 of 51).

placing of limitations, suspension, or bar is in the public interest and that such person – . . .

(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph . . . (D) . . . of paragraph (4) of [Section 15(b)]; or

(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

(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 Respondent if: (1) at the time of the alleged misconduct, she was associated with a broker; (2) she has *either* (a) committed any act, or is subject to an order or finding that she committed any act enumerated in Section 15(b)(4)(D), ***or*** (b) she has been convicted of a specific offense identified in Section 15(b)(4), ***or*** (c) is enjoined from any action, conduct or practice specified in Section 15(b)(4)(C); and (3) a bar is in the public interest.

Here, all of the statutory elements of Section 15(b)(6) are satisfied. First of all, Respondent has been permanently enjoined from committing future violations of Section 15(a) of the Exchange Act, thus satisfying the remedial condition set by Section 15(b)(6)((A)(iii) of the Exchange Act. Second, although the Commission's complaint only alleged a violation of Section 15(a) of the Exchange Act, Respondent's guilty plea to wire fraud, as alleged in her superseding indictment, and her admissions in connection with her sentencing, demonstrate that she willfully violated the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, by knowingly participating in a pyramid scheme and by making false representation to investors about guaranteed returns, thus satisfying the remedial conditions set by Section 15(b)(6)(A)(i) and (ii) of the Exchange Act. *See SEC v. Chen,* No. 2:15-CV-07425-RGK (PLAx), 2016 U.S. Dist. LEXIS 193577, at *22 (C.D. Cal. Dec. 8, 2016)

("Pyramid schemes are …. inherently fraudulent because they must eventually collapse.') (quoting *Webster v. Omnitrition*, 79 F.3d 776, 781 (9th Cir. 1996)); *see also*, *SEC v. Shehyn*, No. 04 CV 2003 (LP), 2010 U.S. Dist. LEXIS 84882 (S.D.N.Y. Aug. 6, 2010) (finding that the factual allegations underlying defendant's wire fraud conviction sufficient to establish defendant also violated the securities laws); *SEC v Dimensional Entm't Corp*., 493 F. Supp. 1270, 1277 (S.D.N.Y. 1980) (same).

Finally, with respect to the penultimate issue of the public interest, Respondent's conduct, as acknowledged in her guilty plea, sentencing memorandum and statements made at her sentencing, were egregious, persisted over a period of years, and involved a high degree of scienter. By her own admissions, she knew, shortly after becoming an investor and while a member of AirBit Club's "Master Council," that AirBit Club's purported Bitcoin mining business was "bogus," that AirBit Club's promises of guaranteed returns were false, and that her and other investors' "returns" were based on the number of downstream investors they could recruit. Knowing all of this, she decided to "go with the flow" for a period of years. *See SEC v. Chen*, 2016 U.S. Dist. LEXIS 193577, at *27 ("[d]efendant's operation of a pyramid scheme is sufficient to show he acted with scienter." (citing *Omnitrition*, 79 F.3d at 788 ("[m]isrepresentations, knowledge and intent flow from the inherently fraudulent nature of a pyramid scheme."). While she now expresses remorse over the harm she has caused to investors, and her upcoming term imprisonment may temporarily prevent her from committing further violations of the securities laws,[4] remedial sanctions are clearly warranted pursuant to Section 15(b)(6) of the Exchange Act. *See, e.g., In the Matter of David F. Bandimere*, AP File No. 3-15124, Initial Dec. Rel. No. 507, 2013 SEC LEXIS 3142, at *187 (Oct. 8. 2013) (respondent's high degree of scienter in violating the antifraud provisions through his participation in a Ponzi scheme supports severe sanctions, regardless of whether his current occupation will not present

[4] Respondent was sentenced on one (1) year and one (1) day on each count of the indictment, to run concurrently, and was ordered to surrender to the U.S. Marshall on February 2, 2024. Crim. Dkt. No. 268. The surrender date was later adjourned to June 1, 2024. Dkt. 285.

opportunities for future violations); *In the Matter of E-Smart Technologies, Inc., f/k/a Plainview Laboratories, Inc*., AP File No. 3-10977, Initial Dec. Rel. No. 272 . 2005 SEC LEXIS 253 (Feb. 3, 2005) ("[i]n considering the likelihood of future violations, the fact that respondent is presently complying with the securities laws does not preclude sanctions.") (citing *SEC v. Fehn*, 97 F.3d 1276, 1995-96 (9th Cir. 1996) (affirming a permanent injunction)).

III. Conclusion

Accordingly, based on the present evidentiary record, and for all the reasons stated in the Division's Motion for Entry of Default and Remedial Sanctions, the Division respectfully requests that Respondent be barred from association 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.

April 12, 2024

Respectfully submitted,

Donald W. Searles
Attorney for Division of Enforcement
Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, California 90071
Telephone: (323) 965-3954

In the Matter of Karina Chairez
Administrative Proceedings File No. 3-21011

SERVICE LIST

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

DECLARATION OF DONALD W. SEARLES IN SUPPORT OF DIVISION OF ENFORCEMENT'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR ENTRY OF DEFAULT JUDGMENT AND REMEDIAL SANCTIONS

was served on April 12, 2024, upon the following parties as follows:

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

BY US Mail
Karina Chairez
[redacted]

Dated: April 12, 2024

DONALD SEARLES [redacted]

Donald W. Searles

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21011

In the Matter of **KARINA CHAIREZ,** **Respondent.**	**DECLARATION OF DONALD W. SEARLES IN SUPPORT OF DIVISION OF ENFORCEMENT'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR ENTRY OF DEFAULT JUDGMENT AND REMEDIAL SANCTIONS**

OS Received 04/12/2024

I, DONALD W. SEARLES, pursuant to 28 U.S.C. § 1746, declare:

1. I am an attorney at law admitted to practice law in the State of California and before the United States District Court for the Central District of California. I am employed as an attorney in the Los Angeles Regional Office of the U.S. Securities and Exchange Commission ("SEC"), and am counsel for the Division of Enforcement in this case. I have personal knowledge or knowledge based upon my review of the file of the facts set forth in this Declaration and, if called and sworn as a witness, could and would competently testify thereto.

2. A true and correct copy of the superseding indictment of Chairez in the parallel criminal action *United States v. Dos Santos, et al.*, Case No. 1:20-cr-398-06, in the Southern District of New York at docket number 33 is attached hereto as Exhibit 1.

3. A true and correct copy of the transcript of Chairez's guilty plea in *United States v. Dos Santos, et al.*, Case No. 1:20-cr-398-06, in the Southern District of New York at docket number 175, is attached hereto as Exhibit 2.

4. A true and correct copy of Chairez's sentencing memorandum in *United States v. Dos Santos, et al.*, Case No. 1:20-cr-398-06, in the Southern District of New York at docket number 249 is attached hereto as Exhibit 3.

5. A true and correct copy of Chairez's sentencing hearing transcript in *United States v. Dos Santos, et al.*, Case No. 1:20-cr-398-06, in the Southern District of New York at docket number 277 is attached hereto as Exhibit 4.

//

//

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 12, 2024, in Los Angeles, California.

Donald W. Searles

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21011

In the Matter of

KARINA CHAIREZ,

Respondent.

DIVISION OF ENFORCEMENT'S INDEX OF EXHIBITS TO THE DECLARATION OF DONALD W. SEARLES OF ITS SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION FOR ENTRY OF DEFAULT AND REMEDIAL SANCTIONS

Exhibit	**Description**
Ex. 1	Superseding indictment in *United States v. Dos Santos, et al.*, Case No. 1:20-cr-398-06, at docket number 33.
Ex. 2	Transcript of Chairez's guilty plea in *United States v. Dos Santos, et al.*, Case No. 1:20-cr-398-06, at docket number 175.
Ex. 3	Sentencing memorandum of Chairez in *United States v. Dos Santos, et al*., Case No. 1:20-cr-398-06, at docket number 249.
Ex. 4	Transcript of Chairez's sentencing in *United States v. Dos Santos, et al*., Case No. 1:20-cr-398-06, at docket number 277.

OS Received 04/12/2024