UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97376 / April 25, 2023

Admin. Proc. File Nos. 3-19814; 3-19815

In the Matters of

WARREN A. DAVIS
and
GIBRALTAR GLOBAL SECURITIES, INC.

ORDER CONSOLIDATING PROCEEDINGS AND REQUESTING ADDITIONAL BRIEFING AND MATERIALS

On May 27, 2020, the Securities and Exchange Commission issued an Order Instituting Proceedings ("OIP") pursuant to Section 15(b) of the Securities Exchange Act of 1934 against Warren A. Davis.[1] The following day, the Commission issued an OIP pursuant to Exchange Act Section 15(b) against Gibraltar Global Securities, Inc.[2] Both OIPs alleged that Davis was the founder and president of Gibraltar, and that in a civil action a federal district court enjoined Davis and Gibraltar ("Respondents") from violating Section 5 of the Securities Act of 1933 and Exchange Act Section 15(a). The OIPs instituted proceedings before the Commission to determine whether the allegations of the OIPs were true and if so what, if any, remedial action against Respondents is appropriate in the public interest.

Respondents were served with the OIPs in their respective proceedings, but they did not file answers. On October 16, 2020, the Division of Enforcement filed a motion for default and other relief. On October 6, 2021, we ordered Respondents to show cause by October 20, 2021, why they should not be deemed to be in default and why their respective proceedings should not be determined against them due to their failures to file an answer and to otherwise defend the proceedings.[3] On November 16, 2021, the Division filed a renewed motion for default. Respondents did not respond to the Division's motions or to the show cause orders.

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1 *Warren A. Davis*, Exchange Act Release No. 88962, 2020 WL 2764740 (May 27, 2020).

2 *Gibraltar Global Sec., Inc.*, Exchange Act Release No. 88965, 2020 WL 2791432 (May 28, 2020).

3 *Warren A. Davis*, Exchange Act Release No. 93265, 2021 WL 4593473 (Oct. 6, 2021); *Gibraltar Global Sec., Inc.*, Exchange Act Release No. 93266, 2021 WL 4593475 (Oct. 6, 2021).

On November 16, 2022, we issued an order in each proceeding requesting that the parties file briefs concerning whether the proceedings should be consolidated.[4] On December 14, 2022, the Division filed a brief in each proceeding stating that consolidation is appropriate because the proceedings "involve common questions of law and fact"; it would "help avoid unnecessary cost or delay"; and it would not result in prejudice. Respondents did not respond to our order regarding consolidation.

We now consolidate the proceedings. We also request that the Division file additional briefing and materials in support of its motions for the entry of default and imposition of remedial sanctions.

I. Consolidation

Rule of Practice 201(a) provides that the Commission may consolidate "proceedings involving a common question of law or fact . . . as it deems appropriate to avoid unnecessary cost or delay."[5] The proceedings here involve common questions of law and fact. Both OIPs allege that Respondents were enjoined in the same civil action from violating the same provisions of the securities laws. According to the OIPs, the complaint in that civil action alleged the same misconduct—that from March 2008 through August 2012:

> [Respondents] unlawfully operated as broker-dealers in the United States. Through its website, Gibraltar solicited prospective U.S. customers by advertising a broad range of brokerage services commonly provided by online broker-dealers. As an additional inducement to U.S. customers, Gibraltar's website advertised the formation of offshore international business corporations with nominee officers and directors that enabled U.S. customers to trade anonymously, "without paying taxes on [their] profits." Gibraltar attracted U.S. customers seeking to sell shares of low-priced, thinly traded microcap issuers. Gibraltar routinely accepted deposits of microcap stocks from U.S. promoters and brokers, arranged for the transfer agent to re-title the stock certificates in Gibraltar's name, and deposited the shares into various securities accounts Gibraltar maintained at broker-dealers located in the United States. When Gibraltar customers instructed Gibraltar to sell the microcap stocks, Gibraltar placed corresponding sell orders with U.S. brokers. After the sales were executed, Gibraltar instructed the U.S. brokers to wire the sale proceeds back to its bank account maintained at the Royal Bank of Canada in the Bahamas. Gibraltar then wired the sale proceeds (less Gibraltar's 2-3% commission) back to its U.S. customers. By engaging in the foregoing

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[4] *Warren A. Davis*, Exchange Act Release No. 96326, 2022 WL 17039049 (Nov. 16, 2022); *Gibraltar Global Sec., Inc.*, Exchange Act Release No. 96328, 2022 WL 17039052 (Nov. 16, 2022).

[5] 17 C.F.R. §201.201(a).

> conduct without registering with the Commission as a broker-dealer, both Davis and Gibraltar violated Section 15(a) of the Exchange Act.
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> The Commission's complaint also alleged that during the relevant timeframe Gibraltar sold approximately $100 million of low-priced microcap securities. In addition to operating as an unregistered broker-dealer in the U.S., Davis and Gibraltar participated in the unlawful unregistered offering and sale of over 10 million shares of MDOR--a penny stock--on behalf of U.S. customers, for proceeds of over $11 million. As a result, both Davis and Gibraltar violated Section 5 of the Securities Act.[6]

The OIPs instituted proceedings to determine whether remedial action against Respondents is in the public interest. Because of these common questions of law and fact, consolidation would avoid unnecessary cost or delay. For example, consolidation would reduce duplication in briefing and in orders and opinions issued by the Commission. Accordingly, we find it appropriate to consolidate the proceedings.[7]

II. Request for Additional Briefing and Materials

As noted above, in each proceeding the Division filed motions for the entry of default and imposition of remedial sanctions against Respondents. The Division's motions requested that the Commission bar Respondents from association with any broker or dealer and from participating in any penny stock offering based on the record and the allegations in the OIP. The Division stated that, as a result of the federal district court's "entry of default judgment against [Respondents] based on the facts alleged in the Complaint, the court found that [Respondents] had violated [Exchange Act] Section 15(a) . . . and [Securities Act] Section 5 . . . , and therefore permanently enjoined" them from future violations of those statutes. The Division supported its motion with the following materials from the civil action: the complaint; the district court's order dated July 2, 2015, granting default judgment and enjoining Respondents; the report and recommendation dated October 15, 2016, from the magistrate judge concerning monetary sanctions; the district court's memorandum decision and order dated January 12, 2016, adopting the report and recommendation; and the final judgment dated January 12, 2016.

When determining whether remedial action, such as broker-dealer and penny stock bars, is in the public interest under Exchange Act Section 15(b), the Commission must consider the

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6 *Davis*, 2020 WL 2764740, at *1-2; *Gibraltar Global Sec., Inc.*, 2020 WL 2791432, at *1–2.

7 *See, e.g., Jocelyn Murphy*, Exchange Act Release No. 91797, 2021 WL 1835414, at *1 (May 7, 2021) (order consolidating follow-on proceedings "predicated on final judgments" in the same underlying proceeding and "based on similar underlying misconduct").

question with reference to the underlying facts and circumstances of the case.[8] The factors that the Commission considers are 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 or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[9] Such analysis must do more than "recite[], in general terms, the reasons why [a respondent's] conduct is illegal," but rather "devote individual attention to the unique facts and circumstances of th[e] case."[10]

The Division relies in part on the allegations of the OIPs with respect to the injunctive action against Respondents to support its request for sanctions. When a respondent defaults, the Commission may deem an OIP's allegations to be true.[11] But the OIPs here recount the allegations of the Commission's complaint; they do not independently allege that Respondents engaged in particular misconduct.[12] Entering Respondents' default would not appear to permit the Commission to deem true the allegations of the Commission's complaint in the injunctive action.

The Division also relies on the district court's orders noted above enjoining Respondents from certain violations of the securities laws and imposing other sanctions. But because those orders were based on the default judgment entered against Respondents, they do not appear to have preclusive effect as to facts alleged in the Commission's complaint.[13]

Under the circumstances, the Commission would benefit from further development of the evidentiary record and additional briefing addressing the Division's arguments as to why broker-dealer and penny stock bars are warranted. The Division should address each statutory element

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8 *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

9 *See id.*; *see also Lawrence Allen DeShetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *2-3 (Nov. 21, 2019) (applying Steadman factors in follow-on proceeding).

10 *See McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (vacating and remanding suspension for failing to meet this standard).

11 *See* Commission Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), 201.220(f).

12 *See supra* note 6 and accompanying text.

13 *See Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at *4 (Feb. 4, 2010); *see also Jaswant Gill*, Advisers Act Release No. 5858, 2021 WL 4131427, at *2 n.7 (Sept. 10, 2021) ("Because Gill's injunction in the civil action was entered by default, we do not rely on any findings made in that action in determining whether Gill's conduct warrants remedial sanctions.").

of the relevant provisions of Exchange Act Section 15(b).[14] The Division's brief should discuss relevant authority relating to the legal basis for and the appropriateness of the requested sanctions and include evidentiary support sufficient to make an individualized assessment of whether those sanctions are in the public interest.[15]

* * *

Accordingly, IT IS ORDERED that the Respondents' proceedings are consolidated, and that Administrative Proceeding File No. 3-19814 shall be the lead file number under which the parties shall file all future documents in this consolidated proceeding.

It is further ORDERED that the Division of Enforcement shall submit, as it deems necessary, any additional evidentiary materials that are relevant to its motions and determination of the public interest by May 25, 2023, as well as a brief not to exceed 5,000 words, explaining the relevance of those materials to its request and the public interest and containing specific citations to the evidence relied upon. As the proceedings are now consolidated, the Division need file only one brief and one set of additional evidentiary materials.

It is further ORDERED that Respondents may file a brief by June 26, 2023, not to exceed 5,000 words, addressing the same matters to be addressed by the Division. Respondents' brief should also address why they have failed to file answers previously or to otherwise defend the proceeding, and why the Commission should not find them in default as a result.[16] Respondents are reminded that when a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding a public hearing.[17] If Respondents file responses to this order, the Division may file replies within 14 days after service.

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[14] *See, e.g.*, *Shawn K. Dicken*, Exchange Act Release No. 89526, 2020 WL 4678066, at *2 (Aug. 12, 2020) (requesting additional information from the Division "regarding the factual predicate for Dicken's convictions" and "why these facts establish" the need for remedial sanctions); *see also Shawn K. Dicken*, Exchange Act Release No. 90215, 2020 WL 6117716, at *1 (Oct. 16, 2020) (clarifying the additional information needed from the Division).

[15] *See generally Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012) (requiring "meaningful explanation for imposing sanctions"); *McCarthy*, 406 F.3d at 190 (stating that "each case must be considered on its own facts"); *Gary McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *1, *3 (Apr. 23, 2015); *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016); *Reinhard*, 2010 WL 421305, at *3-4.

[16] *See supra* note 3 (show cause orders warning Respondents that failure to respond may cause the Commission to find them in default, and noting that the OIPs did the same).

[17] Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, 201.180.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.[18]

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

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[18] *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), https://www.sec.gov/rules/final/2020/34-90442a.pdf; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, https://www.sec.gov/efapdocs/instructions.pdf. The amendments impose other obligations such as a redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81.