

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6464 / October 17, 2023

Admin. Proc. File No. 3-20282

In the Matter of

HAI KHOA DANG

ORDER REQUESTING ADDITIONAL BRIEFING AND MATERIALS

On May 5, 2021, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Hai Khoa Dang pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ Dang was served with the OIP but failed to file an answer to it. On September 13, 2023, the Commission issued an order requiring Dang to show cause by September 27, 2023, 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 or otherwise defend the proceeding.² Dang has not responded to the order to show cause.

The Division of Enforcement had filed a motion for default and imposition of sanctions, to which Dang did not respond, before the Commission issued its order to show cause. The Division’s motion for default requested that the Commission find Dang in default and bar him from the securities industry based on the record and the allegations in the OIP. The motion recited that, on April 19, 2021, a final judgment was entered against Dang permanently enjoining him from future violations of Sections 206(1) and 206(2) of the Advisers Act.³

When determining whether remedial action under Section 203(f) of the Advisers Act is in the public interest, the Commission must consider the question with reference to the underlying facts and circumstances of the case.⁴ 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

¹ *Hai Khoa Dang*, Advisers Act Release No. 5731, 2021 WL 1812172 (May 5, 2021).

² *Hai Khoa Dang*, Advisers Act Release No. 6420, 2023 WL 5956359 (Sept. 13, 2023).

³ *SEC v. Dang*, No. 20-cv-1353, 2021 WL 1550593, at *8 (D. Conn. Apr. 19, 2021).

⁴ *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981).

the respondent's occupation will present opportunities for future violations.⁵ 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."⁶

The Division relies in part on the allegations of the OIP with respect to the injunctive action against Dang to support its request for sanctions. When a respondent defaults, the Commission may deem an OIP's allegations to be true.⁷ But the OIP here recounts the allegations of the Commission's complaint; it does not independently allege that Dang engaged in particular misconduct.⁸ Entering Dang's 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 final judgment enjoining Dang from certain violations of the securities laws. However, because that injunction was based on a default judgment, it does not have preclusive effect as to facts alleged in the Commission's complaint.⁹

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 sanctions are warranted. The Division should address each statutory element of the relevant provisions of the Advisers Act Section 203(f).¹⁰ The Division's brief should discuss relevant

⁵ 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).

⁶ See *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (vacating and remanding suspension for failing to meet this standard).

⁷ See Commission Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), 201.220(f).

⁸ *Dang*, 2021 WL 1812172, at *1 (relying exclusively on the Commission's complaint and the entry of an injunction).

⁹ 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.").

¹⁰ See, e.g., *Bruce C. Worthington*, Advisers Act Release No. 6037, 2022 WL 1785718, at *1 (June 1, 2022) (noting that "the Commission would benefit from being able to review some of the evidence supporting the [Division attorney's] declaration" submitted after initial request for additional information by the Commission); *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).

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.¹¹

Accordingly, it is ORDERED that the Division of Enforcement shall submit, as it deems necessary, any additional evidentiary materials that are relevant to its motion and determination of the public interest by November 16, 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.

It is further ORDERED that Dang may file a brief by December 18, 2023, not to exceed 5,000 words, addressing the same matters to be addressed by the Division. Dang's brief should also address why he has failed to file an answer previously or to otherwise defend this proceeding, and why the Commission should not find him in default as a result.¹² Dang is 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

¹¹ 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”); *Sean Kelly*, Advisers Act Release No. 6006, 2022 WL 1288179, at *2 (Apr. 28, 2022) (noting that the Division submitted declaration from lead investigator in Commission investigation); *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, *appeal after remand*, Exchange Act Release No. 63720, 2011 WL 121451, at *5-8 (Jan. 14, 2011).

¹² See *supra* note 2 (show cause order warning Dang that failure to respond may cause the Commission to find him in default and noting that the OIP did the same).

without holding a public hearing.¹³ If Dang files a response to this order, the Division may file a reply within 14 days after its service.

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

Vanessa A. Countryman
Secretary

¹³ Rules of Practice 155, 180, 17 C.F.R. § 201.155, .180.