SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6482 / November 14, 2023

Admin. Proc. File No. 3-21122

In the Matter of

EUGENIO GARCIA JIMENEZ, JR.

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of conspiracy to commit wire fraud and engaging in monetary transactions in property derived from a specified unlawful activity. *Held*, it is in the public interest to bar respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

APPEARANCES:

Stephanie N. Moot and *Sean M. O'Neill*, for the Division of Enforcement.

On September 21, 2022, the Securities and Exchange Commission instituted an administrative proceeding ("OIP") against Eugenio Garcia Jimenez, Jr. ("Garcia"), pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] We now find Garcia to be in default, deem the allegations against him to be true, and bar him from associating in the securities industry in any capacity.

I. Background

A. The Commission instituted the proceeding against Garcia.

The order instituting proceedings ("OIP") alleges that, on September 15, 2022, Garcia pleaded guilty to one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349, and one count of engaging in monetary transactions in property derived from a specified unlawful activity, in violation of 18 U.S.C. § 1957. As of the date of the OIP, Garcia was awaiting sentencing.[2]

According to the OIP, from 2016 through 2018, Garcia was the chief executive officer and principal of Eugenio Garcia Jr. and Associates, LLC, a Mayagüez, Puerto Rico firm that held itself out as an investment adviser that assisted municipal governments in facilitating investment in public development and pursuing "capital endeavors" with investors. The OIP alleges that Garcia admitted in connection with his plea that, between March 2016 to June 2018, he acted as an unregistered investment adviser within the meaning of the Advisers Act by providing investment advice regarding investments in securities to the City of Mayagüez, Puerto Rico ("the City") and Mayagüez Economic Development, Inc. ("MEDI") a Puerto Rico Municipal Enterprise.[3] The OIP further alleges that as an adviser to the City and MEDI, Garcia participated in a scheme to commit fraud including making, and causing to be made, materially false statements to the City. Specifically, Garcia falsely asserted that $9 million in funds assigned to the City for the purpose of renovating and improving a local trauma center was invested at a high rate of return at financial institutions. Instead, the OIP alleges, Garcia caused financial transactions that depleted those funds and converted them for his personal use.

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1 *Eugenio Garcia Jimenez, Jr.*, Advisers Act Release No. 6143, 2022 WL 4445435 (Sept. 21, 2022).

2 Pursuant to Rule of Practice 323, we take official notice that on August 8, 2023, the district court sentenced Garcia to 64 months' imprisonment followed by 2 years' supervised release and ordered him to forfeit more than $7 million. *See* 17 C.F.R. § 201.323 (providing that official notice may be taken "of any material fact which might be judicially noticed by a district court of the United States"); *Am. Inv. Serv., Inc.*, Exchange Act Release No. 43991, 2001 WL 167861, at *1 n.1 (Feb. 21, 2001) (recognizing Commission's authority to take official notice of federal district court orders).

3 *See* Advisers Act Section 202(a)(11), 15 U.S.C. § 80b-2(a)(11) (providing that the term "investment adviser" generally includes "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings . . . as to the advisability of investing in, purchasing, or selling securities").

The OIP instituted proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed Garcia to file an answer to the allegations contained therein within 20 days after service, as provided by Rule of Practice 220(b).[4] The OIP informed Garcia that if he failed to answer, he could be deemed in default, the allegations in the OIP could be deemed to be true as provided in the Rules of Practice, and the proceeding could be determined against him upon consideration of the OIP.[5]

B. Garcia failed to answer the OIP, respond to an order to show cause why he should not be found in default, or respond to a motion for a default and sanctions.

Garcia was properly served with the OIP on October 15, 2022, pursuant to Rule of Practice 141(a)(2)(i),[6] but did not respond. On December 1, 2022, more than 20 days after service, the Commission ordered Garcia to show cause by December 15, 2022, why it should not find him in default due to his failure to file an answer or otherwise to defend this proceeding.[7] Garcia was warned that if found in default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against him upon consideration of the record. In the event that Garcia failed to respond to the order to show cause, the order directed the Division to file a motion for default and the imposition of remedial sanctions by January 12, 2023.

After Garcia failed to answer the OIP or respond to the show cause order, the Division filed a motion requesting that the Commission find Garcia in default and bar him from the securities industry. The Division supported the motion with copies of the indictment, plea agreement and accompanying stipulation of facts, magistrate judge's report recommending that the district court accept Garcia's guilty plea, and a docket entry reflecting the presiding judge's approval and adoption of that report and recommendation. Garcia did not respond to the Division's motion.

II. Analysis

A. We deem Garcia to be in default and deem the OIP's allegations to be true.

Rule of Practice 155(a) provides that if a party fails to "answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding," we may deem the party to be in default and "determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which

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4 17 C.F.R. § 201.220(b).

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

6 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein").

7 *Eugenio Garcia Jimenez, Jr.*, Advisers Act Release No. 6197, 2022 WL 17401538 (Dec. 1, 2022).

may be deemed to be true."[8] Because Garcia has failed to answer or to respond to the show cause order or the Division's motion, we find it appropriate to deem him to be in default and to deem the allegations of the OIP to be true. We base the findings that follow on the record, including the OIP and evidentiary materials that the Division submitted with its motion for default and a bar.

B. We find an industry bar to be in the public interest.

Advisers Act Section 203(f) authorizes the Commission to suspend or bar a person from the securities industry if it finds, on the record after notice and opportunity for hearing, that (1) the person was convicted of a felony or misdemeanor arising out of the conduct of the business of an investment adviser within ten years of the commencement of the proceeding; (2) the person was associated with an investment adviser at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[9]

The record establishes the first two of these elements. Within ten years of the commencement of this proceeding, Garcia was convicted of offenses arising out of the conduct of business of an investment adviser.[10] The allegations of the OIP deemed true, together with the facts admitted by Garcia in entering his guilty plea, establish that, between March 2016 and June 2018, Garcia acted as an unregistered investment adviser by providing the City and MEDI advice regarding investments in securities.[11] And his convictions under 18 U.S.C. §§ 1349 and 1957

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[8] 17 C.F.R. § 201.155(a); *see also* Rule of Practice 220(f), 17 C.F.R. § 201.220(f) (providing that "[i]f a respondent fails to file an answer required by this section within the time provided, such respondent may be deemed in default pursuant to" Rule of Practice 155(a)).

[9] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)); *see also id.* § 80b-3(e)(2)(B) (discussing convictions arising "out of the conduct of the business of a[n] . . . investment adviser").

[10] *See* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "convicted" to include a "plea of guilty" if it "has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed"). In arguing that Garcia's convictions were qualifying offenses, the Division's motion for default cited other subparagraphs of Advisers Act Section 203(e)(2), namely Section 203(e)(2)(C)-(D). But we think that the same conclusion follows even more directly under Section 203(e)(2)(B). As the Division's motion elsewhere argues, Garcia's default "deem[s] admitted . . . the OIP's allegation" that Garcia "'acted as an unregistered investment adviser' . . . by providing securities investment advice" to the City and to MEDI. The Division furthermore correctly points out that "[i]n his guilty plea, Garcia admitted that while acting as an 'advisor to [the City] and MEDI' he engaged in a scheme to defraud the City and MEDI." *See* Advisers Act Section 203(e)(2)(B), 15 U.S.C. § 80b-3(e)(2)(B) (including convictions arising "out of the conduct of the business of a[n] . . . investment adviser").

[11] *See, e.g.*, 15 U.S.C. § 80b-3(a)(11) (defining "investment adviser" as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities"); *see also Koch v. SEC*, 793 F.3d 147, 157 (D.C. Cir. 2015) ("The definition of investment adviser does not include whether one is registered or not with the

arose from his actions in that capacity: as part of his plea agreement, Garcia admitted that, while acting as an "advisor to [the City] and MEDI," he (1) falsely represented that their investment was intact and earning 18% interest; and (2) funneled $270,000 of their funds through his own bank account to make a real estate purchase. Because Garcia acted as an unregistered investment adviser at the time of his misconduct, he necessarily also was a person associated with an investment adviser.[12]

Thus, we need determine only if any remedial action is in the public interest. In doing so, we consider 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 the conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[13] Our public interest inquiry is flexible, and no one factor is dispositive.[14] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[15]

We have weighed these factors and conclude that an industry bar is warranted to protect the investing public. Garcia's misconduct—the underlying facts of which are recited in the OIP, whose allegations we deem true, and admitted as part of his guilty plea—was egregious and recurrent. While acting as an investment adviser, Garcia falsely asserted that $9 million assigned to the City for renovating and improving a local trauma center was invested at a high rate of return at financial institutions. Instead, Garcia caused financial transactions that depleted City funds and converted such funds to Garcia's personal use.[16] Garcia's misconduct caused the City substantial financial losses: the stipulation of facts incorporated into his plea agreement states that of the $9 million Garcia and his co-conspirators obtained from the City through material misrepresentations, they returned only $1.8 million, which they falsely represented to be a return

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SEC. Hence, Koch could be primarily liable for violating the Advisers Act irrespective of registration with the Commission." (citations omitted)).

[12] *See Shreyans Desai*, Advisers Act Release No. 4656, 2017 WL 782152, at *3 (Mar. 1, 2017); *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who "act[s] as an investment adviser in an individual capacity" is "in a position of control with respect to the investment adviser" and thus "meets the definition of a 'person associated with an investment adviser'").

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

[14] *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

[15] *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

[16] *See Eldrick E. Woodley*, Advisers Act Release No. 5981, 2022 WL 836849, at *3 (Mar. 21, 2022) (finding investment adviser's conduct to be egregious where he misappropriated $147,000 in client funds); *see also Patrick M. Schiro*, Advisers Act Release No. 6321, 2023 WL 3790462, at *3 (June 1, 2023) (finding investment adviser misconduct causing a loss of $481,583 to be egregious); *cf. Sean Kelly*, Advisers Act Release No. 6006, 2022 WL 1288179, at *4 (Apr. 28, 2022) (finding misappropriation of investor funds for personal use to be egregious).

on investment. Moreover, Garcia's misconduct was not isolated, but spanned nearly two years.[17] The record therefore establishes that Garcia repeatedly abused the City's and MEDI's trust in his position as their investment adviser.[18]

Garcia also acted with a high degree of scienter.[19] In pleading guilty to conspiracy to commit wire fraud, Garcia admitted that he "willfully and knowingly" conspired to "devise a scheme and artifice to defraud and [to] obtain[] money and property" from the City and MEDI "by means of materially false and fraudulent pretenses, representations, and promises."[20] And in pleading guilty to engaging in monetary transactions in property derived from a specified unlawful activity, Garcia admitted that he "knowingly" purchased real estate using $270,000 derived from the conspiracy to commit wire fraud.[21]

Because Garcia failed to answer the OIP or respond to the order to show cause or to the Division's motion, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. It also appears that Garcia's occupation presents opportunities for future violations because he acted as an investment adviser during the over two-year period in which the misconduct underlying his convictions occurred, and he offers no assurances about his future plans.[22] Although Garcia is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.[23] And although Garcia's guilty pleas may evidence some appreciation for the

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17 *Woodley*, 2022 WL 836849, at *3 (considering investment adviser's misconduct spanning two years as recurrent).

18 *See Oscar Ferrer Rivera*, Advisers Act Release No. 5759, 2021 WL 2593642, at *4 (June 24, 2021) (barring respondent who "repeatedly abused the position of trust he occupied as an investment adviser" and citing *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary . . . as egregious.")); *see also Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at *6 (June 17, 2011) ("Investment advisers and their associated persons have a fiduciary duty to their clients.").

19 *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm).

20 Plea Agreement at 1-2, *United States v. Garcia-Jimenez*, No. 3:21-cr-82 (D.P.R. Aug. 26, 2022), ECF No. 253; *see, e.g.*, *United States v. Greenlaw*, 84 F.4th 325, 339 (5th Cir. 2023) (explaining that a violation of 18 U.S.C. § 1349 requires a specific intent to defraud).

21 Plea Agreement at 2-3; *see also* 18 U.S.C. § 1957(a) ("Whoever . . . knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 . . . derived from specified unlawful activity . . . shall be punished . . . .").

22 *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (expressing concern that respondent's occupation would present opportunities for future violations where he did not indicate that he planned to leave the securities industry).

23 *See Kimm Hannan*, Advisers Act Release No. 5906, 2021 WL 5161855, *3 (Nov. 5, 2021) (citing *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (finding that "there is a likelihood that Armstrong would, after his release from

wrongfulness of his conduct, they do not outweigh the evidence that he poses a risk to the investing public.[24]

The Commission may impose bars to protect the investing public from a respondent's future actions by restricting access to areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm. Here, the record establishes that Garcia is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[25] Given that Garcia has defaulted in this proceeding, he has not opposed the imposition of any associational bar. Because Garcia poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[26]

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

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prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again")).

[24] *See Roman Sledziejowski*, Exchange Act Release No. 97485, 2023 WL 3433408, at *4 & n. 28 (May 11, 2023) (citing *James S. Tagliaferri*, Release No. 10308, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding that the "egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility")).

[25] *See Tagliaferri*, 2017 WL 632134, at *6 (finding that the misconduct underlying the respondent's conviction demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

[26] *Id.* (imposing associational bars where they were necessary to protect the public).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6482 / November 14, 2023

Admin. Proc. File No. 3-21122

In the Matter of

EUGENIO GARCIA JIMENEZ, JR.

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Eugenio Garcia Jimenez, Jr. is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Vanessa A. Countryman
Secretary