

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 99732 / March 13, 2024

Admin. Proc. File No. 3-21011

In the Matter of  
KARINA CHAIREZ

ORDER REQUESTING ADDITIONAL BRIEFING AND MATERIALS FROM THE  
PARTIES

On August 26, 2022, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Karina Chairez pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> Although she was properly served with the OIP, Chairez did not file an answer to it.<sup>2</sup> On February 7, 2024, the Division of Enforcement filed a motion for entry of default and remedial sanctions in which it requested that Chairez be indefinitely barred from the securities industry and from participating in an offering of penny stock. To date, Chairez also has not responded to that motion.

When determining whether remedial action under Exchange Act Section 15(b) is in the public interest, the Commission must consider the question with reference to the underlying facts and circumstances of the case.<sup>3</sup> 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.<sup>4</sup> Such analysis must do

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<sup>1</sup> *Karina Chairez*, Exchange Act Release No. 95619, 2022 WL 3703842 (Aug. 26, 2022).

<sup>2</sup> *See Karina Chairez*, Exchange Act Release No. 98861, 2023 WL 7379371, at \*1 (Nov. 6, 2023) (ordering Chairez to show cause why she should not be deemed to be in default and this proceeding determined against her due to her failure to file an answer after service of the OIP).

<sup>3</sup> *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981).

<sup>4</sup> *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).

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.”<sup>5</sup>

To support its motion, the Division relied on the complaint from a Commission injunctive action against Chairez.<sup>6</sup> The Division also relied on an amended default judgment from that action, which enjoined Chairez from violating Exchange Act Section 15(a).<sup>7</sup> But because the injunction was based on a default judgment, it does not have preclusive effect as to facts alleged in the Commission’s complaint.<sup>8</sup>

In its moving brief, the Division also cites to a paragraph of the OIP that summarizes the allegations of the Complaint in the injunctive action.<sup>9</sup> When a respondent defaults, the Commission may deem an OIP’s allegations to be true.<sup>10</sup> But deeming the allegations of the OIP’s summary paragraph to be true would appear, at most, to allow the Commission to conclude that the Complaint contained certain allegations.<sup>11</sup> It would not appear to allow the Commission to deem the summarized allegations to be true themselves.

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<sup>5</sup> See *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (vacating and remanding suspension for failing to meet this standard).

<sup>6</sup> *SEC v. Chairez*, Case 1:20-cv-10582-CM (S.D.N.Y. Dec. 15, 2020), ECF No. 1.

<sup>7</sup> *SEC v. Chairez*, Case 1:20-cv-10582-CM (S.D.N.Y. July 11, 2022), ECF No. 35; 15 U.S.C. § 78o(a). The Division also cites to the Commission’s brief requesting entry of the amended judgment, which relied on the complaint. *SEC v. Chairez*, Case 1:20-cv-10582-CM (S.D.N.Y. May 5, 2022), ECF No. 31.

<sup>8</sup> 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.”).

<sup>9</sup> See *Chairez*, 2022 WL 3703842, at \*1, ¶ B.3.

<sup>10</sup> See Commission Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), 201.220(f).

<sup>11</sup> See, e.g., *Hai Khoa Dang*, Advisers Act Release No. 6464, 2023 WL 6879346, at \*1 (Oct. 17, 2023); *Daniel B. Vazquez, Sr.*, Exchange Act Release No. 93912, 2022 WL 44347, at \*2 (Jan. 5, 2022).

The Division also submitted the indictment and judgment from what it characterizes as a parallel criminal proceeding against Chairez.<sup>12</sup> The judgment would appear to permit the Commission to conclude that Chairez pleaded guilty to conspiracy to commit wire fraud and conspiracy to commit money laundering and that she engaged in the essential elements of those offenses.<sup>13</sup> But because the record does not contain any materials from the criminal proceeding showing that Chairez admitted all of the allegations of the indictment, it does not appear that there is a basis in the record for the Commission to treat those allegations as true.<sup>14</sup>

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 submit any additional evidentiary materials that may be helpful to the Commission's determination of the public interest, including materials from the criminal proceeding, such as transcripts of change of plea and sentencing hearings and sentencing memoranda the parties may have submitted to the court. In its briefing, the Division should address each statutory element of the relevant provisions of Exchange Act Section 15(b). The Division's brief should discuss relevant authority relating to the legal basis for and the

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<sup>12</sup> *United States v. Dos Santos*, Case No. 1:20-cr-398-06 (S.D.N.Y. Oct. 21, 2020), ECF No. 33 (superseding indictment); *United States v. Dos Santos*, Case No. 1:20-cr-398-06 (S.D.N.Y. Oct. 5, 2023), ECF No. 268 (judgment); *see also Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at \*5 & n.21 (Jan. 14, 2011) (considering respondent's criminal conviction in assessing sanctions although it was not referenced in the OIP); *Robert Bruce Lohmann*, Exchange Act Release No. 48092, 2003 WL 21468604, at \*5 n.20 (June 26, 2003) (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions").

<sup>13</sup> *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at \*8 (Feb. 13, 2009) ("In pleading guilty to 18 U.S.C. § 1001, Kornman admitted to each of its elements."), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010); *see also McCarthy v. United States*, 394 U.S. 459, 466 (1969) (stating that "a guilty plea is an admission of all the elements of a formal criminal charge").

<sup>14</sup> *Cf. Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at \*3 (Apr. 23, 2015) (finding that where jury in underlying criminal proceeding returned a general verdict finding respondent guilty "the law judge erred in relying on the allegations in the superseding indictment in his sanctions analysis").

appropriateness of the requested sanctions and include evidentiary support sufficient to make an individualized assessment of whether those sanctions are in the public interest.<sup>15</sup>

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 April 12, 2024, 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 Chairez may file a brief by May 13, 2024, not to exceed 5,000 words, addressing the same matters to be addressed by the Division. Chairez's brief should also address why she has failed to file an answer previously or to otherwise defend this proceeding, and why the Commission should not find her in default as a result.<sup>16</sup> Chairez shall also include a proposed answer to be accepted if the Commission does not enter a default against her.<sup>17</sup> Chairez 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 without holding a public hearing.<sup>18</sup> If Chairez files a response to this order, the Division may file a reply within 14 days after its service.

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<sup>15</sup> 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); *McDuff*, 2015 WL 1873119, at \*1, \*3; *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).

<sup>16</sup> See *Chairez*, 2023 WL 7379371, at \*1 (show cause order).

<sup>17</sup> *Id.*

<sup>18</sup> Rules of Practice 155, 180, 17 C.F.R. § 201.155, .180.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.<sup>19</sup> We also remind the parties that any document filed with the Commission must also be served upon all participants in the proceeding and be accompanied by a certificate of service.<sup>20</sup>

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

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

Vanessa A. Countryman  
Secretary

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<sup>19</sup> See Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission's website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. Parties generally also must certify that they have redacted or omitted sensitive personal information from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e). Rules of Practice 150(c)(1) and 152(a)(1) allow a party who cannot serve or file documents electronically (due, for example, to a “lack of access to electronic transmission devices”) to serve or file paper documents upon making a certification to that effect. 17 C.F.R. §§ 201.150(c)(1), 152(a)(1).

<sup>20</sup> See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (“Papers filed with the Commission . . . shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.”).