SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6783 / December 9, 2024

Admin. Proc. File No. 3-21333

In the Matter of

GUSTAVO A. GUZMAN

OPINION OF THE COMMISSION

INVESTMENT ADVISER

Grounds for Remedial Action

Injunction

Respondent was permanently enjoined from violations of the federal securities laws. *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:

Jeffrey A. Shank for the Division of Enforcement.

On March 6, 2023, the Securities and Exchange Commission instituted an administrative proceeding against Gustavo A. Guzman pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] We now find Guzman 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 this proceeding against Guzman.

The order instituting proceedings ("OIP") alleged that on May 18, 2018, the United States District Court for the Western District of North Carolina entered a final judgment against Guzman, permanently enjoining him from violating Section 17(a) of the Securities Act of 1933;[2] Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder;[3] and Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder.[4] The OIP further alleged that Guzman was an unregistered investment adviser who sold interests in and managed the investments for two unregistered private funds, G2 Asset Management LLC and East Egg Private Equity. According to the OIP, the Commission's complaint alleged that, from at least 2009 to 2015, Guzman engaged in a fraudulent scheme that spanned more than five years and raised more than $2.1 million from at least a dozen investors.

The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed Guzman to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).[5] The OIP informed Guzman 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.[6]

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1 *Gustavo A. Guzman*, Advisers Act Release No. 6255, 2023 WL 2385576 (March 6, 2023).

2 15 U.S.C. § 77q(a).

3 15 U.S.C. § 78j(b), 17 C.F.R. § 240.10b-5.

4 15 U.S.C. § 80b-6(1), (2), and (4), 17 C.F.R. § 275.204(4)-8.

5 17 C.F.R. § 201.220(b).

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

B. Guzman 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.

Guzman was properly served with the OIP on March 16, 2023, pursuant to Rule of Practice 141(a)(2)(i),[7] but when he did not respond, the Commission ordered him to show cause why he should not be deemed in default.[8] The Division of Enforcement then filed a motion requesting that the Commission find Guzman in default and bar him from associating in the securities industry. In support of its motion, the Division attached documents from a parallel criminal proceeding against Guzman, in which he pleaded guilty in the U.S. District Court for the Western District of North Carolina to securities fraud in violation of Exchange Act Section 10(b) and Exchange Act Rule 10b-5.[9] Those documents included a "Factual Basis" and a plea agreement in which Guzman agreed not to object to or contradict the facts in the Factual Basis.[10]

On February 26, 2024, Guzman informed the Commission that he had instructed his prior counsel to respond to the OIP, and that, unbeknownst to Guzman, counsel failed to do so. On March 27, 2024, the Commission issued an order discharging the order to show cause and extending the time for Guzman to respond to the OIP until May 13, 2024.[11] Guzman again failed to file an answer or respond to the Division's motion, and on June 12, 2024, the Commission ordered Guzman to show cause by July 30, 2024, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.[12] The show cause order warned Guzman that, if the Commission found him to be default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against him upon

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[7] 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "handing a copy of the order to the individual").

[8] *Gustavo A. Guzman*, Advisers Act Release No. 6524, 2024 WL 111149 (Jan. 8, 2024).

[9] *See* Indictment, *United States v. Guzman*, No. 3:17-cr-00186, ECF No. 3 (W.D.N.C. June 22, 2017); Acceptance and Entry of Guilty Plea, *Guzman*, ECF No. 26 (W.D.N.C. July 28, 2023). We take official notice of the records in the underlying civil and criminal proceedings pursuant to Rule of Practice 323. *See* 17 C.F.R. § 201.323 (providing that official notice may be taken "of any fact which might be judicially noticed by a district court of the United States"); *see also Akers v. Watts*, 589 F. Supp. 2d 12, 15 (D.D.C. 2008) (stating that a court may "take judicial notice of the records of . . . federal courts").

[10] The Division submitted an affidavit stating that it personally served various filings in this case on Guzman at the Robert A. Deyton Detention Facility, in Lovejoy, GA on October 26, 2023, and it appears that he remains in custody while awaiting sentencing. *See* Order of Detention Pending Trial, *Guzman*, ECF No. 13 (Nov. 10, 2022).

[11] *Gustavo A. Guzman*, Advisers Act Release No. 6579, 2024 WL 1327398 (Mar. 24, 2024).

[12] *Gustavo A. Guzman*, Advisers Act Release No. 6624, 2024 WL 2958709 (June 12, 2024).

consideration of the record. Guzman never responded to the second show cause order or the Division's earlier default motion.

II. Analysis

A. We deem Guzman 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 in default and "determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true."[13] Because Guzman has failed to answer or respond to the show cause order or to the Division's motion, we find it appropriate to deem him to be in default and the allegations of the OIP to be true. We base the findings that follow on the record, including the OIP and the evidentiary materials related to Guzman's criminal proceeding that the Division submitted with its motion for default and sanctions.[14]

B. The threshold requirements for the imposition of a bar are satisfied.

Advisers Act Section 203(f) authorizes the Commission to suspend or bar a person from associating in the securities industry if it finds, on the record and after notice and opportunity for hearing, that (1) the person was enjoined from engaging in or continuing any practice or conduct in connection with investment advisers activities, or in connection with the purchase or sale of any security; (2) the person was associated with an investment adviser at the time of the misconduct; and (3) such a sanction is in the public interest.[15]

The record establishes the first two of these elements. Within ten years of the commencement of this proceeding Guzman was enjoined from conduct in connection with the

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[13] 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)).

[14] Because Guzman's injunction was entered by default, we do not rely on any findings made in that action in determining whether Guzman's conduct warrants remedial sanctions. *See Jaswant Gill*, Advisers Act Release No. 5858, 2021 WL 4131427, at *2 n.7 (Sept. 10, 2021). We may, however, consider Guzman's criminal plea and related documents in assessing the public interest, even though the OIP does not contain any allegations concerning the criminal case. *See, e.g., Don Warner Reinhard*, Advisers Act Release No. 3139, 2011 WL 121451, at *5 (Jan. 14, 2011) (considering respondent's criminal conviction in assessing sanctions although the conviction was not referenced in the OIP).

[15] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(2) and (4); 15 U.S.C. § 80b-3(e)(2) and (4)); *see also id.* § 80b-3(e)(2)(A)-(B) (discussing convictions); *id.* § 80b-3(e)(4) (discussing injunctions).

purchase and sale of securities. The district court's judgment permanently enjoined Guzman from violating Securities Act Section 17(a), Exchange Act Section 10(b), Exchange Act Rule 10b-5, and Advisers Act Sections 206(1), 206(2), and 206(4) and Advisers Act Rule 206(4)-8. The allegations of the OIP deemed true also establish that Guzman was, at the time of the misconduct, acting as an unregistered investment adviser.[16] Because Guzman acted as an investment adviser, he necessarily was also a person associated with an investment adviser.[17] We therefore need determine only if any remedial action is in the public interest.

C. We find that barring Guzman from the securities industry is in the public interest.

In determining whether remedial action is in the public interest, 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 his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[18] Our public interest inquiry is flexible, and no one factor is dispositive.[19] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[20]

We have weighed all these factors and conclude that an industry bar is warranted to protect the investing public. Guzman's misconduct was egregious and recurrent. As stated in the Factual Basis, which Guzman agreed not to contest, he "used and employed various manipulative and deceptive devices and contrivances" from approximately April 2010 to August

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16 *See, e.g.*, 15 U.S.C. § 80b-2(a)(11) (defining "investment adviser" as including "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 SEC.") (citations omitted).

17 *Shreyans Desai*, Advisers Act Release No. 4656, 2017 WL 782152, at *3 (Mar. 1, 2017) (that respondent "acted as an unregistered investment adviser establishes that he was associated with an investment adviser for purposes of Advisers Act Section 203(f)") (citing *Anthony J. Benincasa*, Advisers Act Release No. 1923, 2001 WL 99813, at *2 (Feb. 7, 2001) (explaining that a person who acts "as an unregistered 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'")).

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

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

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

2015 in connection with the purchase and sale of more than $2 million in securities of various entities he controlled.[21] According to the Factual Basis, Guzman's fraudulent conduct involved making, and causing others to make, "material false statements to investors and fail[ing] to disclose material information to investors about, among other things, the returns generated by his entities, his use of investors' money for personal expenses, and his use of new investor money to make payments to other investors." Investor losses from Guzman's conduct exceeded $1.5 million, and a Division staff declaration establishes that, from 2012 to 2015, Guzman misappropriated over $250,000 in investor funds.

Guzman also acted with a high degree of scienter.[22] He was convicted of securities fraud under Exchange Act 10(b) and Rule 10b-5, both of which require scienter.[23] Further, Guzman admitted to "willfully us[ing] and emplyo[ing] various manipulative and deceptive devices and contrivances in connection with the purchase and sale of" various securities.

Because Guzman failed to answer the OIP or respond to the show cause order or to the Division's motion, he has made no assurances in this proceeding that he will not commit future violations. The guilty plea in his criminal proceeding indicates that Guzman might have some appreciation for the wrongfulness of his conduct, but it does not outweigh the evidence that he poses a risk to the investing public.[24] Although Guzman appears to remain incarcerated pending sentencing, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release.[25]

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[21] *See, e.g. Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *3 (Feb. 4, 2008) (finding misconduct to be recurrent when it "occurred over three years").

[22] *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).

[23] *See, e.g., Korem*, 2013 WL 3864511, at *6 (finding that respondent acted with "a high degree of scienter" in part because the "Exchange Act § 10(b) and Rule 10b-5 charges . . . required knowing, willful, or at the very least, reckless conduct"); *see also Tagliaferri*, 2017 WL 632134, at *6 (jury's finding of a willful violation of Exchange Act Section 10(b) was sufficient to show that respondent acted with scienter).

[24] *See Cindy Vandivier*, Exchange Act Release No. 100788, 2024 WL 3889003, at *3 (Aug. 24, 2024) ("[A]lthough her guilty plea indicates . . . some appreciation for the wrongfulness of her conduct, it does not outweigh the evidence that [respondent] poses a risk to the investing public.").

[25] *Allan Michael Roth*, Exchange Act Release No. 90343, 2020 WL 6488283, at *5 (Nov. 4, 2020); *see also Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (barring respondent based in part on finding that "there is a likelihood that [respondent] would, after his release from prison, be able to and inclined to re-enter the securities industry where he would confront opportunities to violate the law again").

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 Guzman is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[26] Given that Guzman has defaulted in this proceeding, he has not opposed the imposition of an associational bar. Because Guzman poses a continuing threat to investors, we conclude that it is in the public interest to bar him from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

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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[26] *Tagliaferri*, 2017 WL 632134, at *6 ("Fidelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly." (cleaned up)).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6783 / December 9, 2024

Admin. Proc. File No. 3-21333

In the Matter of

GUSTAVO A. GUZMAN

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Gustavo A. Guzman 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