UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93912 / January 5, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 5937 / January 5, 2022

Admin. Proc. File No. 3-19720

In the Matter of

DANIEL B. VAZQUEZ, SR.

ORDER REQUESTING ADDITIONAL BRIEFING AND MATERIALS

On March 3, 2020, the Securities and Exchange Commission ("Commission") issued an order instituting administrative proceedings ("OIP") against Daniel B. Vazquez, Sr., pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.[1] Vazquez was subsequently served with the OIP but failed to answer it.

On October 29, 2021, the Commission issued an order requiring Vazquez to show cause by November 12, 2021, 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 and to otherwise defend the proceeding.[2] If Vazquez did not submit a responsive filing, the order required the Division of Enforcement to file a motion for entry of an order of default and the imposition of remedial sanctions by December 10, 2021.[3] The order also explained that the motion for sanctions should address each statutory element of the relevant provisions of Exchange Act Section 15(b) and Advisers Act Section 203(f) and 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.[4]

After Vazquez did not respond to the show cause order, the Division filed a motion requesting that he be found in default and barred from the securities industry and from

1 *Daniel B. Vazquez, Sr.*, Exchange Act Release No. 88314, 2020 WL 1031574 (Mar. 3, 2020); *see* 15 U.S.C. §§ 78o(b), 80b-3(f).

2 *Daniel B. Vazquez, Sr.*, Exchange Act Release No. 5899, 2021 WL 5039669, at *1 (Oct. 29, 2021).

3 *Id.*

4 *Id.*

participating in any offering of a penny stock. The motion recited that on December 11, 2019, a final judgment was entered against Vazquez permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.[5] To support its motion, the Division relied on materials attached to a declaration it submitted with its motion: the OIP, an order from the injunctive action denying without prejudice the Commission's motion for entry of a default judgment against Vazquez, and the subsequent final judgment granting that motion and enjoining Vazquez.

When determining whether remedial action, such as an industry bar, is in the public interest under Exchange Act Section 15(b) and Advisers Act Section 203(f), the Commission must consider the question with reference to the underlying facts and circumstances of the case.[6] 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.[7] 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."[8]

The Division relies in part on the allegations of the OIP with respect to the injunctive action against Vazquez to support its request for sanctions. When a respondent defaults, the Commission may deem an OIP's allegations to be true.[9] But the OIP here recounts the allegations of the Commission's complaint; it does not independently allege that Vazquez engaged in particular misconduct.[10] Entering Vazquez's default would not appear to permit the Commission to deem true the allegations of the Commission's complaint in the injunctive action.

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5 *SEC v. Vazquez*, Civ. A. No. 8:18−cv−0047 CJC (KESx) (C.D. Cal. Dec. 11, 2019), ECF No. 34; *see also Vazquez*, 2020 WL 1031574, at *1 (referencing same).

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

7 *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).

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

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

10 *Vazquez*, 2020 WL 1031574, at *1 (stating that the "Commission's complaint alleged that Vazquez and his firm Hoplon committed fraud with the assistance of Hoplon's COO" and providing additional detail regarding that alleged misconduct).

The Division also relies on the final judgment enjoining Vazquez from certain violations of the securities laws. But because that injunction was entered by default, it does not have preclusive effect as to facts alleged in the Commission's complaint.[11]

The Division also references a "parallel criminal action" against Vazquez that is not identified in the OIP. But the Division does not request that the Commission consider that action in ruling on its motion. Nor did it submit any materials from it.

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 industry and penny stock bars are warranted.

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 February 4, 2022, as well as a brief not to exceed 5000 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 Vazquez may file a brief by March 7, 2022, not to exceed 5000 words, addressing the same matters to be addressed by the Division. Vazquez'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] Vazquez 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.[13] If Vazquez 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

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11 *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.").

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

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