SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 100431 / June 26, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6633 / June 26, 2024

Admin. Proc. File No. 3-19720

In the Matter of

DANIEL B. VAZQUEZ, SR.

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

INVESTMENT ADVISER PROCEEDING

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 and from participating in an offering of penny stock.

APPEARANCES:

Lynn M. Dean for the Division of Enforcement

On March 3, 2020, the Securities and Exchange Commission instituted an administrative proceeding 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] We now find Vazquez to be in default, deem the allegations against him to be true, and bar him from associating in the securities industry in any capacity and from participating in an offering of penny stock.

I. Background

A. The Commission instituted the proceeding against Vazquez.

The order instituting proceedings ("OIP") alleged that, on December 11, 2019, in a civil action the Commission brought against Vazquez, a federal district court entered a final judgment permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[2] The OIP alleged that Vazquez was the founder and CEO of Hoplon Financial Group ("Hoplon") and the New Economic Opportunities Fund I, LLC ("NEON").[3] According to the OIP, the complaint alleged that, in 2011, Vazquez and Hoplon established NEON to pool investors' funds to ostensibly purchase and resell residential real estate, but Vazquez instead misused substantial amounts of NEON funds, causing a total loss to investors.[4]

The OIP also alleged that from 1998 through 2016, Vazquez was associated as a registered representative with a series of broker-dealer firms and, on or around May 12, 2016, voluntarily resigned from his last firm shortly after FINRA notified him of an open investigation involving Hoplon.[5] According to the OIP, Vazquez failed to provide requested documents to

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

2 *Vazquez*, 2020 WL 1031574, at *1; *see also* Final Judgment as to Daniel B. Vazquez, Sr., *SEC v. Vazquez*, Case No. 8:18-cv-00047 (C.D. Cal. Dec. 11, 2019), ECF No. 34; 15 U.S.C. §§ 77q(a), 78j(b); 17 C.F.R. § 240.10b-5. We take official notice of the final judgment and other civil and criminal federal district court orders and documents referenced herein pursuant to Commission Rule of Practice 323. *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"); *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"). We also take official notice of Vazquez's BrokerCheck report and records from the Commission's Investment Adviser Public Disclosure ("IAPD") database pertaining to Vazquez and Hoplon. *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 WL 1071562, at *1 n.1 (Mar. 17, 2016) (taking official notice of BrokerCheck records); Rule of Practice 323, 17 C.F.R. § 201.323 (authorizing Commission to take official notice of its "public official records").

3 *Vazquez*, 2020 WL 1031574, at *1.

4 *Id.*

5 *Id.*; *see also* https://files.brokercheck.finra.org/individual/individual_3141463.pdf (BrokerCheck report for Daniel Benjamin Vazquez, Sr., listing associations with FINRA member firms); https://reports.adviserinfo.sec.gov/reports/individual/individual_3141463.pdf

FINRA, and, effective September 12, 2016, FINRA permanently barred him from associating with any FINRA member in any capacity.[6]

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 Vazquez to file an answer to the allegations contained therein within 20 days of service, as provided by Rule of Practice 220(b).[7] The OIP informed Vazquez that, if he failed to answer, he could be deemed in default, the allegations in the OIP could be deemed to be true, and the proceeding could be determined against him upon consideration of the record.[8]

B. Vazquez 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 default and sanctions.

Vazquez was properly served with the OIP on September 25, 2021, pursuant to Rule of Practice 141(a)(2)(i),[9] but did not answer it. On October 29, 2021, more than 20 days after service, the Commission ordered Vazquez to show cause by November 12, 2021, why it should not find him in default due to his failure to file an answer or otherwise to defend this proceeding.[10] The show cause order warned Vazquez that if the Commission found him to be 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.[11] Vazquez did not respond to the show cause order.

On December 10, 2021, the Division of Enforcement filed a motion requesting that the Commission find Vazquez in default and bar him from associating in the securities industry and from participating in any offering of penny stock. The Division supported the motion with the allegations of the OIP and with an order and the final judgment from the civil action against Vazquez. In response to a subsequent Commission order,[12] the Division supplemented the record with declarations from Commission staff, investigative testimony, and various documents

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(IAPD report showing that Vazquez was registered with several investment advisers between January 2011 and May 2016); https://reports.adviserinfo.sec.gov/reports/ADV/155387/PDF/155387.pdf (IAPD report showing Vazquez's association with Hoplon Financial Group).

6 *Vazquez*, 2020 WL 1031574, at *1; *see also supra* note 5, BrokerCheck Report.

7 17 C.F.R. § 201.220(b).

8 *See Vazquez*, 2020 WL 1031574, at *2; Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

9 17 C.F.R. § 201.141(a)(2)(i) (authorizing service of an OIP on an individual by "sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or express mail and obtaining a confirmation of receipt").

10 *Daniel B. Vazquez, Sr.*, Exchange Act Release No. 93481, 2021 WL 5039669, at *1 (Oct. 29, 2021).

11 *Id.* & n.4 (citing Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180).

12 *Daniel B. Vazquez, Sr.*, Exchange Act Release No. 93912, 2022 WL 44347 (Jan. 5, 2022).

relating to NEON and Hoplon. In its submissions, the Division referenced a "parallel criminal action" in which Vazquez pleaded guilty to two counts of engaging in, and aiding and abetting, mail fraud and eight counts of engaging in, and aiding and abetting, wire fraud; was sentenced to a term of 41 months imprisonment; and ordered to pay restitution.[13] Vazquez did not respond to the Division's motion or its subsequent filing.

II. Analysis

A. We deem Vazquez 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."[14] Because Vazquez has failed to answer or respond to the show cause order or the Division's motion, we find it appropriate to deem him in default and deem the allegations of the OIP to be true.[15] We base the findings that follow on the record, including the OIP, evidentiary materials the Division submitted, and additional materials of which we take official notice.[16]

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[13] *See* Judgment and Probation/Commitment Order, *United States v. Vazquez*, Case No. 8:18-cr-00077 (C.D. Cal. July 9, 2019), ECF No. 66, *amended by* ECF No. 90 (C.D. Cal. July 9, 2021) (correcting typographical error to properly reflect indictment counts of which Vazquez was convicted); *see also* Indictment, *United States v. Vazquez*, Case No. 8:18-cr-00077 (C.D. Cal. Apr. 25, 2018), ECF No. 1 (alleging that Vazquez engaged in mail and wire fraud through NEON and Hoplon).

[14] 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 [rule] within the time provided, such respondent may be deemed in default pursuant to [Rule 155(a)]").

[15] Because the final judgment in the injunctive action was entered by default, we do not rely on the allegations of the complaint in that action. *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at *4 (Feb. 4, 2010) (explaining that issue preclusion does not apply in the case of a judgment entered by default). For the same reason, we do not rely on findings made in that action, beyond the fact that Vazquez was enjoined. *See Jaswant Gill*, Advisers Act Release No. 5858, 2021 WL 4131427, at *2 n.7 (Sept. 10, 2021) (explaining that the Commission did not rely on any findings made in a civil injunctive action entered by default in determining remedial sanctions).

[16] Although the OIP did not predicate this action on Vazquez's criminal conviction, we may consider his conviction in determining whether it is appropriate to impose sanctions on him. *See generally Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *5 (Jan. 14, 2011) (considering respondent's criminal conviction in sanctions analysis although it was not referenced in the OIP (citing *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"))).

B. We find that barring Vazquez from the securities industry and from participating in penny stock offerings is in the public interest.

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from associating in the securities industry and from participating in the offering of penny stock if it finds, on the record after notice and opportunity for hearing, that (1) the person was enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security; (2) the person was associated with a broker or dealer at the time of the misconduct; and (3) such a sanction is in the public interest.[17] Similarly, 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 after notice and opportunity for hearing, that (1) the person was enjoined from engaging in or continuing any conduct or practice 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.[18]

The record establishes the first two of these elements under each statute. First, because the district court enjoined Vazquez from violating Exchange Act Section 10(b) and Rule 10b-5,[19] Vazquez has been enjoined "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security."[20] Second, the allegations of the OIP deemed true, and additional evidence, establish that Vazquez was associated with broker-dealer and investment-adviser firms during the period of his misconduct.[21]

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 his conduct, and the

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17 15 U.S.C. § 78*o*(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4)(C), 15 U.S.C. § 78*o*(b)(4)(C), which specifies injunctions against various actions, conduct, and practices).

18 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4), which specifies injunctions against various actions, conduct, and practices).

19 *See* 15 U.S.C. § 78j(b), 17 C.F.R. § 240.10b-5 (each applying to conduct "in connection with the purchase or sale of any security").

20 Exchange Act Section 15(b)(4)(C), 15 U.S.C. § 78*o*(b)(4)(C); Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4).

21 *See* Exchange Act Section 15(b)(6), 15 U.S.C. § 78*o*(b)(6) (referencing whether respondent was associated with a broker or dealer "at the time of the alleged misconduct"); Advisers Act Section 203(f), 15 U.S.C. § 80b-3(f) (same with respect to investment adviser); Complaint, *SEC v. Vazquez*, Case No. 8:18-cv-00047 (C.D. Cal. Jan. 12, 2018), ECF No. 1 (alleging misconduct by Vazquez between 2011 and 2018); *supra* note 5 (evidencing Vazquez's associations with broker-dealer and investment-adviser firms between 2011 and 2016).

likelihood that the respondent's occupation will present opportunities for future violations.[22] Our public interest inquiry is flexible, and no one factor is dispositive.[23] The remedy is intended to protect the trading public from further harm, not to punish the respondent.[24]

We have weighed all these factors and find associational and penny stock bars are warranted to protect the investing public. Vazquez's conduct was egregious and recurrent. In late 2010, Vazquez established the NEON fund, of which he served as CEO. The offering documents for NEON represented that it would pool investor funds to buy, refurbish, and resell homes; that Vazquez would not receive a salary from NEON; and that Hoplon, as NEON's manager, would bear its own overheard costs.

Between 2011 and 2014, Vazquez raised approximately $2.18 million from 27 individual investors. NEON used some of these funds to purchase properties and renovate them. But from January 2013 to January 2018, Vazquez also received $494,842 in cash transfers from NEON and $59,314 worth of improvements to his personal residence. And the only payment to NEON investors was for $1,411 in February 2014. As of January 2018, the balances in all relevant Hoplon and NEON accounts was less than $1,000.

In the criminal action against Vazquez, the district court found that, through Hoplon, Vazquez "fraudulently induced investors to invest in" NEON, and that "he misrepresented the intended use of invested funds and the returns," and used investors' funds "to live a lavish lifestyle."[25] The court found that investor losses were approximately $2 million, and Vazquez himself, in a memorandum submitted before his sentencing, conceded losses of $1.135 million.[26]

Vazquez also committed his misconduct with scienter, as each of the criminal counts to which Vazquez pleaded guilty—*i.e.*, engaging in, and aiding and abetting, mail fraud and wire fraud—requires a specific intent to defraud.[27]

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

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

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

25 Sentencing Memorandum, *United States v. Vazquez*, Case No. 8:18-cr-00077 (C.D. Cal. Jul. 8, 2019), ECF No. 65.

26 *Id.*; *see also* Order Denying Mot. for Compassionate Release, *United States v. Vazquez*, Case No. 8:18-cr-00077 (C.D. Cal. Dec. 22, 2020), ECF No. 88 (finding that Vazquez "perpetrated a long-running investment fraud which resulted in investor losses of $2.6 million").

27 *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1118 (D.C. Cir. 2009) (stating that mail and wire fraud each "require specific intent to defraud"); *United States v. Brugnara*, 856 F.3d 1198, 1207 (9th Cir. 2017) (same); *see also United States v. Thum*, 749 F.3d 1143, 1148–49 (9th Cir. 2014) (stating that conviction for aiding and abetting requires proof "that the accused had the requisite intent of the underlying substantive offense").

Because Vazquez failed to answer the OIP, or to respond to the show cause order or the Division's motion, he has made no assurances in this proceeding that he will not commit future violations. Although his guilty plea indicates that Vazquez might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that he poses an ongoing risk to the investing public.[28] Vazquez's occupation also presents opportunities for future violations, as he has worked as a registered representative for approximately 18 years; was the principal of Hoplon, a registered investment adviser; and offers no assurances about his future plans.[29]

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. Acting with scienter, Vazquez defrauded investors, personally enriching himself for years and causing them to suffer at least $2 million in harm. As explained above, the record establishes that Vazquez is unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors.[30] Given that Vazquez has defaulted in this proceeding, he has not opposed the imposition of any associational bar or a bar from participating in an offering of penny stock. We

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[28] *See Lawrence Allen DeShetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *3 (Nov. 21, 2019); *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding the "egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility").

[29] *See George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 (Jan. 20, 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).

[30] *Price*, 2017 WL 405511, at *5 (barring respondent where the misconduct underlying the respondent's injunction demonstrated that the respondent was unfit to participate in the securities industry and posed a risk to investors); *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).

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 and from participating in an offering of penny stock.[31]

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners CRENSHAW, UYEDA and LIZÁRRAGA; Commissioner PEIRCE concurring in part and dissenting with respect to the imposition of a bar from participating in an offering of penny stock).

Vanessa A. Countryman
Secretary

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[31] *Price*, 2017 WL 405511, at *5 (imposing associational and penny stock bars where necessary to protect the public); *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *5 (Apr. 20, 2012) (finding that "barring Respondents from participating in the securities industry and from participating in an offering of penny stock provides an important additional layer of protection to the public beyond the sanctions imposed by the district court").

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100431 / June 26, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6633 / June 26, 2024

Admin. Proc. File No. 3-19720

In the Matter of

DANIEL B. VAZQUEZ, SR.

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Daniel B. Vazquez, Sr., is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and it is further

ORDERED that Daniel B. Vazquez, Sr., is barred from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Vanessa A. Countryman
Secretary