SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 101217 / September 30, 2024

Admin. Proc. File Nos. 3-19814; 3-19815

In the Matter of

WARREN A. DAVIS
and
GIBRALTAR GLOBAL SECURITIES, INC.

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Broker-dealer firm and its principal were permanently enjoined from violations of the registration provisions of the federal securities laws. *Held*, it is in the public interest to bar respondents from association with any broker or dealer, and from participation in any penny stock offering.

APPEARANCES:

Melissa Armstrong for the Division of Enforcement.

In May 2020, the Securities and Exchange Commission instituted proceedings against Warren A. Davis and Gibraltar Global Securities, Inc. ("Respondents") pursuant to Section 15(b) of the Securities Exchange Act of 1934.[1] The Commission subsequently consolidated the proceedings.[2] We now find Respondents to be in default, deem the allegations against them to be true, and bar them from associating with a broker or dealer in any capacity, and from participating in an offering of penny stock.

I. Background

A. The Commission instituted these proceedings against Respondents.

The orders instituting proceedings ("OIPs") allege that Gibraltar was a Bahamian broker-dealer not registered in the United States, and Davis controlled Gibraltar as its sole owner and president. The OIPs allege that Davis established brokerage accounts on Gibraltar's behalf in the United States; was authorized to trade on Gibraltar's behalf; and authorized other Gibraltar employees to place trades in the United States. The OIPs also allege that Respondents participated in the offering and sale of shares in United States of Magnum d'Or (ticker: MDOR), a penny stock.

The OIPs allege further that, in a civil action brought by the Commission, a federal district court entered a default judgment against Respondents permanently enjoining them from violating Exchange Act Section 15(a) and Section 5 of the Securities Act of 1933.[3] According to the OIPs, the Commission's complaint in the civil action alleged that, from March 2008 through August 2012, Respondents operated as unregistered broker-dealers in the United States, advertising that Gibraltar would enable U.S. customers to trade "without paying taxes on [their] profits," and ultimately selling more than $100 million low-priced microcap securities for U.S. customers.[4] The complaint also alleged, according to the OIP, that Respondents participated in the unregistered offering and sale of more than 10 million shares of MDOR for proceeds of more than $11 million.

The OIPs initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. They directed Respondents to file answers to the allegations within 20 days after service, as provided by Rule

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1 *Warren A. Davis*, Exchange Act Release No. 88962, 2020 WL 2764740 (May 27, 2020); *Gibraltar Global Sec., Inc.*, Exchange Act Release No. 88965, 2020 WL 2791432 (May 28, 2020).

2 *Warren A. Davis*, Exchange Act Release No. 97376, 2023 WL 3090014 (Apr. 25, 2023).

3 The OIPs noted that, in a separate civil action brought by the Commission, a federal district court permanently enjoined Respondents from violating Securities Act Section 5 and Gibraltar from violating Securities Act Section 17(a). *See SEC v. Carillo Huettel LLP*, No. 13-CV-1735 (GBD) (S.D.N.Y. May 3, 2017).

4 *See also* Complaint, *SEC v. Gibraltar Global Sec., Inc.*, No. 13-CV-2575 (S.D.N.Y. Apr. 18, 2013).

of Practice 220(b).[5] The OIPs informed Respondents that if they failed to answer, they could be deemed to be in default, the allegations in the OIPs could be deemed to be true as provided in the Rules of Practice, and the proceeding could be determined against them upon consideration of the OIPs.[6]

B. Respondents failed to answer the OIPs, respond to orders to show cause why they should not be found in default, or respond to motions for default and sanctions.

Gibraltar and Davis were properly served with the OIPs on June 9, 2020 and June 20, 2020, respectively, pursuant to Rule of Practice 141(a)(2),[7] but did not respond. On October 6, 2021, more than 20 days after service, the Commission ordered Respondents to show cause by October 20, 2021, why it should not find them in default due to their failures to file an answer or otherwise defend this proceeding.[8] The show cause orders warned Respondents that if the Commission found them to be in default, the allegations in the OIPs would be deemed to be true and the Commission could determine the proceeding against them upon consideration of the record. Respondents did not respond to the show cause orders.

On November 16, 2021, the Division of Enforcement filed motions requesting that the Commission find Respondents in default and bar them from associating with any broker or dealer and from participating in an offering of penny stock. The Division supported the motions with documents from the civil action, including the order granting default judgment as a discovery sanction; magistrate judge's report and recommendation; decision adopting report and recommendation; and final judgment. Respondents did not respond to the Division's motions.

On September 19, 2023, the Commission issued a renewed order to show cause for Davis, requiring that he show cause by October 3, 2023, why he should not be found in default due to his failure to file an answer or otherwise defend this proceeding.[9] The show cause order warned Davis 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. Davis did not respond to the renewed order to show cause.

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5 17 C.F.R. § 201.220(b).

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

7 17 C.F.R. § 201.141(a)(2).

8 *Warren A. Davis*, Exchange Act Release No. 93265, 2021 WL 4593473 (Oct. 6, 2021); *Gibraltar Global Sec., Inc.*, Exchange Act Release No. 93266, 2021 WL 4593475 (Oct. 6, 2021).

9 *Warren A. Davis*, Exchange Act Release No. 98434, 2023 WL 6125564 (Sept. 19, 2023). The Commission issued the renewed order to show cause because the initial show cause order for Davis, dated October 6, 2021, "may not have been served properly" on him. *Id.* Because that was not an issue as to Gibraltar, the Commission did not issue a renewed order to show cause for it.

II. Analysis

A. We deem Respondents to be in default and deem the OIPs'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 may be deemed to be true."[10] Because Respondents have failed to answer or to respond to the show cause orders or the Division's motions, we find it appropriate to deem them to be in default and deem the allegations of the OIPs to be true. We base the findings that follow on the record, including the OIPs and the evidentiary materials that the Division submitted with its motions for default and sanctions.

B. Collateral estoppel applies to the default judgment in the underlying civil action.

The doctrine of collateral estoppel precludes the Commission from reconsidering a district court's judgment, as well as factual and procedural issues that were actually litigated and necessary to the court's judgment.[11] Although this doctrine generally does not apply to a district court's default judgment as no underlying issues are actually litigated in that circumstance, a default judgment has preclusive effect where entered by the district court "'as a sanction for bad conduct, and the party being estopped had the opportunity to participate in the underlying litigation.'"[12]

Here, Respondents participated in the underlying civil action for more than two years, filing a motion to dismiss, other pre-trial motions, and an answer, and appearing for conferences

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[10] 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)).

[11] *Sherwin Brown*, Advisers Act Release No. 3217, 2011 WL 2433279, at *4 (June 17, 2011); *see also Blinder, Robinson & Co., Inc.*, Exchange Act Release No. 23913, 1986 WL 628577, at *4 (Dec. 19, 1986) ("'Under the doctrine of collateral estoppel, . . . the second action is [based] upon a different cause of action and the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action.'" (quoting *Parklane Hoisery Co., Inc. v. Shore*, 439 U.S. 322, 326 and n.5 (1979))), *vacated and remanded on other grounds*, 837 F.2d 1099 (D.C. Cir. 1988).

[12] *Reginald Buddy Ringgold, III*, Advisers Act Release No. 6267, 2023 WL 2705591, at *3 (Mar. 29, 2023) (quoting *In re Snyder*, 939 F.3d 92, 100 (2d Cir. 2019)); *see also Snyder*, 939 F.3d at 100-01 (giving preclusive effect to default judgment entered as a sanction for failing to comply with discovery requirements); *In re Docteroff*, 133 F.3d 210, 215 (3d Cir. 1997) (same); *In re Daily*, 47 F.3d 365, 368-69 (9th Cir. 1995) (same); *In re Bush*, 62 F.3d 1319, 1322-25 (11th Cir. 1995) (same); *SEC v. Earthly Mineral Sols., Inc.*, No. 2:07-CV-1057 JCM (LRL), 2010 WL 3829348, at *3 (D. Nev. Sept. 24, 2010) (same).

and oral argument.[13] But after Respondents failed to comply with orders requiring them to produce documents and appear for depositions, the district court entered default judgment as a discovery sanction pursuant to Federal Rule of Civil Procedure 37.[14] Thus, we find that affording preclusive effect to the district court's default judgment against Respondents on all claims in the Commission's complaint is appropriate.[15]

As relevant here, after entering default judgment, the district court made fact findings as part of its determination to impose remedial sanctions.[16] The district court found that, from March 2008 through August 2012, Davis and Gibraltar each violated Exchange Act Section 15(a) by operating out of the Bahamas as unregistered broker-dealers for U.S. customers. Gibraltar's website advertised online brokerage services for U.S. customers, and offered to enable U.S. customers to trade anonymously, "without paying taxes on [their] profits," through the formation of offshore international business corporations with nominee officers and directors.

The district court found that Respondents sold $116 million of low-priced, thinly traded microcap securities for U.S. customers. To effect the sales, the court found, Respondents accepted deposits of the securities from U.S. customers, arranged for the transfer agent to re-title the stock certificates in Gibraltar's name, and deposited the shares into accounts Gibraltar maintained at U.S. brokers. When customers instructed Respondents to sell the securities, Respondents placed corresponding sell orders with the U.S. brokers. After the sales were executed, Respondents instructed the U.S. brokers to wire the sale proceeds to Gibraltar's account in the Bahamas. Respondents then wired the sale proceeds, less a 2-3% commission, to the U.S. customers. Further, to enable U.S. customers to avoid taxes, Davis provided the U.S. brokers with IRS withholding forms on which he falsely certified that Gibraltar—a non-U.S. entity exempt from withholding—was the beneficial owner of the income generated from the above transactions.

The district court found further that, from November 2008 through December 2009, Respondents violated Securities Act Section 5 by participating in the unregistered offering and sale of MDOR shares. Three U.S. customers, acting as nominees for MDOR, deposited with Gibraltar more than 10 million shares of MDOR that they had received directly from the issuer. Respondents then retitled the share certificates in Gibraltar's name and deposited the shares into Gibraltar's accounts at U.S. brokers. After the U.S. brokers sold the shares for $11,384,589, they

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13 Docket, *Gibraltar*, No. 13-CV-2575 (S.D.N.Y.).

14 Order Granting Default Judgment, *Gibraltar*, No. 13-CV-2575 (S.D.N.Y. July 2, 2015), ECF No. 73; *see also* Fed. R. Civ. P. 37(b)(2)(A)(vi) & (d)(3) (permitting entry of default judgment against a party that has failed to "obey an order to provide" discovery or appear at a deposition).

15 *See supra* note 12 and accompanying text.

16 Memorandum Decision and Order, *Gibraltar*, No. 13-CV-2575 (S.D.N.Y. Jan. 12, 2016), ECF No. 84 (decision adopting magistrate judge's report and recommendation); *see also* Report and Recommendation, *Gibraltar*, No. 13-CV-2575 (S.D.N.Y. Oct. 16, 2015), ECF No. 81.

returned those proceeds to Gibraltar's account in the Bahamas, and Respondents then wired $7.175 million of the proceeds directly to MDOR.

For their misconduct, the district court permanently enjoined Respondents from violating Exchange Act Section 15(a) and Securities Act Section 5, and ordered that they disgorge, jointly and severally, ill-gotten gains of $14,449,176. The district court also ordered Davis and Gibraltar each to pay a tier-two civil penalty of $3,667,146, which it found warranted considering that their misconduct was egregious and recurrent, and that they committed the Securities Act Section 5 violations "knowing of [MDOR's] illegal capital-raising scheme."[17]

C. We find that barring Respondents from associating with any broker or dealer 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 with any broker or dealer and from participating in an 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 broker or dealer activities, or in connection with the purchase or sale of any security; (2) the person was associated with a broker or dealer, or was participating in a penny stock offering, at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[18]

The record establishes the first two of these elements. First, because the district court enjoined Respondents from violating Exchange Act Section 15(a) and Securities Act Section 5, they have been enjoined from broker-dealer activities and from conduct in connection with the purchase or sale of any security.[19] Second, the district court found, and the OIP as to Gibraltar alleged, that Gibraltar was a broker-dealer at the time of the misconduct. Because Gibraltar was a broker-dealer, it was necessarily a person associated with a broker or dealer.[20] Also, the district court found, and the OIP as to Davis alleged, that Davis controlled Gibraltar as its sole owner and president at the time of the misconduct. Davis therefore was a person associated with

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17 Report and Recommendation, *Gibraltar*, No. 13-CV-2575 (S.D.N.Y. Oct. 16, 2015), ECF No. 81 at 21; Memorandum Decision and Order, *Gibraltar*, No. 13-CV-2575 (S.D.N.Y. Jan. 12, 2016), ECF No. 84 at 10; *see also* 15 U.S.C. §§ 77t(d)(2) & 78u(d)(3)(B) (providing that tier-two civil penalties are warranted for violations involving "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement").

18 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).

19 *See* 15 U.S.C. § 78*o*(a) (prohibiting unregistered brokers or dealers from effecting transactions in securities); 15 U.S.C. § 77e (prohibiting unregistered offers and sales of securities).

20 *See* 15 U.S.C. § 78c(a)(9) (defining a "person" under the Exchange Act to include companies); *Executive Fin. Servs., Inc.*, Exchange Act Release No. 99153, 2023 WL 8648748, at *2 (Dec. 13, 2023) ("Because the OIP, taken as true, states that EFS was acting as an unregistered broker at the time of its misconduct, it was a person associated with a broker.").

a broker or dealer.[21] Further, the district court found, and the OIPs alleged, that Respondents participated in a penny stock offering at the time of the misconduct.

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.[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 these factors and conclude that, to protect the investing public, bars from associating with any broker or dealer and from participating in an offering of penny stock are warranted for Respondents. As the district court found, Respondents' misconduct was egregious and recurrent. For more than four years they operated as unregistered brokers-dealers, and for more than a year they participated in a penny stock's unregistered offering and sale. The breadth of that misconduct was also significant—Respondents sold $116 million of low-priced microcap securities as unregistered broker-dealers and sold $11 million of unregistered penny stock shares.[25] Respondents also encouraged and enabled their U.S. customers to evade taxes, including by making and certifying false statements on IRS forms. As for scienter, although not an element of Respondents' violations, the district court found that they committed the Securities Act Section 5 violations knowingly.

Because they have not participated in these proceedings, Respondents have made no assurances that they will not commit future violations or that they recognize the wrongful nature of their conduct. It also appears that Respondents' occupations present opportunities for future

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21 *See* 15 U.S.C. § 78c(a)(18) (defining a "person associated with a broker or dealer" to mean any "officer . . . of such broker or dealer . . . [or] any person directly or indirectly controlling . . . such broker or dealer").

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 *See, e.g., Executive Fin. Servs., Inc.*, 2023 WL 8648748, at *3 (finding misconduct egregious, and imposing industry and penny stock bars, where for over three years respondent acted as an unregistered broker and effected unregistered sales of an issuer's securities in return for $458,000 in commissions); *David Howard Welch*, Exchange Act Release No. 92267, 2021 WL 2941483, at *4 (June 25, 2021) (finding misconduct egregious, and imposing industry bar, where for over three years respondent effected unregistered sales of two issuers' securities for proceeds of $4.5 million).

violations as they acted as unregistered broker-dealers during the more than four-year period of their misconduct, and they offer no assurances about their future plans.[26]

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 Respondents are unfit to participate in the securities industry and that their participation in it in any capacity would pose a risk to investors.[27] Respondents not only committed registration violations with a significant scope—$116 million in securities sales, including $11 million they knew were unregistered penny stock shares—but also did so while encouraging and assisting customers, through fraud, to avoid taxes. Given that Respondents have defaulted in this proceeding, they have not opposed the imposition of any particular associational bar or a bar from participating in an offering of penny stock. Because Respondents pose a continuing threat to investors, we conclude that it is in the public interest to bar them from association with any broker or dealer, and from participating in an offering of penny stock.[28]

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] *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); *cf. Ralph Calabro*, Exchange Act Release No. 75076, 2015 WL 3439152, at *41 (May 29, 2015) (explaining that respondent offered "no assurance against future violations other than to assert that he has left the industry voluntarily, which provides no guarantee that he will not seek to return at some point in the future," and concluding that "[a]bsent a bar, nothing would prevent [respondent] from reentering the industry").

[27] *See James S. Tagliaferri*, Advisers Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (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).

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101217 / September 30, 2024

Admin. Proc. File Nos. 3-19814; 3-19815

In the Matter of

WARREN A. DAVIS
and
GIBRALTAR GLOBAL SECURITIES, INC.

ORDER IMPOSING REMEDIAL SANCTIONS

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

ORDERED that Warren A. Davis and Gibraltar Global Securities, Inc. are barred from association with any broker or dealer; and it is further

ORDERED that Warren A. Davis and Gibraltar Global Securities, Inc. are 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