UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File Nos. 3-19814; 3-19815

In the Matters of

WARREN A. DAVIS,
and
GIBRALTAR GLOBAL SECURITIES, INC.

Respondents.

DIVISION OF ENFORCEMENT'S ADDITIONAL BRIEFING IN SUPPORT OF RENEWED MOTION FOR ENTRY OF DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS AGAINST RESPONDENTS

Pursuant to the Commission's Order Requesting Additional Briefing and Materials,[1] the Division of Enforcement ("Division") submits this supplemental brief and materials in support of its renewed motion requesting the entry of default and the imposition of remedial sanctions against Warren A. Davis ("Davis") and Gibraltar Global Securities, Inc. ("Gibraltar"), barring them from: (i) association with any broker or dealer; and (ii) participating in any offering of a penny stock.

The Division alleged in Section II.1 of the OIPs that Davis and Gibraltar: (1) acted as unregistered broker-dealers and placed trades in the United States; and (2) participated in the offering and sale of shares in the United States of Magnum d'Or (symbol "MDOR"), which is a penny stock.[2]

[1] *Warren A. Davis* and *Gibraltar Global Securities, Inc.*, Exchange Act Release No. 97376, 2023 WL 3090014 at *1 (April 25, 2023).

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

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Despite being served with their respective OIPs, respondents failed to answer the OIPs or make an appearance. Even after the entry of an order to show cause, and numerous opportunities *over the past three years*, respondents ignored these proceedings and are in default. Therefore, the allegations in the OIPs should be deemed to be true.[3] As in the underlying civil action, described in in Section II.3 and II.4 of the OIPs, the Division alleges that respondents engaged in serious misconduct that warrants the requested remedial sanctions of associational and penny stock bars.

I. Supporting Evidence

The Division relies on and incorporates by reference the briefs submitted and arguments made in support of the previous requests for entry of default and imposition of sanctions, including the facts and information reflected in the documents submitted from the underlying civil action:[4]

Exhibit A	Division's Complaint against Davis and Gibraltar, dated April 18, 2013
Exhibit B	District Court's Order granting default judgment, dated July 2, 2015
Exhibit C	Magistrate Judge's Report and Recommendation, dated October 16, 2015
Exhibit D	District Court's Memorandum and Decision, dated January 12, 2016
Exhibit E	District Court's Final Default Judgment, dated January 12, 2016

In further support of why broker-dealer and penny stock bars are in the public interest, the Division submits the following additional materials.

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[3] Commission Rules of Practice 155(a) and 220(f) [17 C.F.R. §§ 201.155(a); 201.220(f)]; *see also In the Matter of Alicia Bryan*, Initial Decision of Default, A.P. File No. 3-15937, (Oct. 22, 2014) (Elliot, ALJ); *In the Matter of Black Diamond Asset Management LLC & Robert Wilson*, Order Finding Respondents in Default, A.P. File No. 3-18099, (Sept. 28, 2017) (Grimes, ALJ)

[4] Commission Rule of Practice 323 [17 C.F.R. § 201.323], provides that official notice may be taken of any material fact that might be judicially noticed by a district court, or in the public official records of the Commission, or within the knowledge of the Commission as an expert body.

Exhibit F: Answer to the Complaint by Davis and Gibraltar. In their answer, respondents *admitted* that: Gibraltar was wholly owned by Davis, and Gibraltar maintained a website offering brokerage services (¶¶1,15-19); Gibraltar performed brokerage transactions for U.S. customers (¶2); Gibraltar performed transactions involving MDOR worth approximately $11,000,000 (¶3); Gibraltar is a broker dealer domiciled in the Bahamas that has never been registered with the Commission as a broker dealer (¶¶8, 24); Davis, as the founder and President of Gibraltar, traded on Gibraltar's behalf, and Davis has never been registered with the Commission as a broker dealer (¶¶9, 24); Gibraltar performed broker's transactions involving approximately 11 million shares of MDOR (¶14); Gibraltar created accounts with U.S.' brokers (¶20); Gibraltar performed broker's transactions for its U.S. customers, charged a broker's commission, and some shares from those transactions were registered in Gibraltar's name instead of the customer's name, with the notation "fbo" or *for the benefit of* a specific customer, with proceeds transferred to its own account at the Royal Bank of Canada (¶¶21-23); Gibraltar performed broker's transactions involving approximately 11 million shares of MDOR between on or about November 2008 and September 2009 (¶¶25, 26); between on or about November 2008 to December 2009—through *Oppenheimer & Co.*, *Noble Trading*, *Alpine Securities Corp.*, and *Scottsdale Capital Advisors* (U.S. brokers)—Gibraltar excuted orders for approximately 10,717,060 shares of MDOR, with sales proceeds of about $11,384,589 (¶27); Gibraltar performed brokers transactions and transferred proceeds from its account at Royal Bank of Canada, which it then sent to Magnum d'Or (¶29).

Exhibit G: Memorandum and Order Denying Respondent's Motion. Respondents refused to produce in discovery their files concerning U.S. customers. Denying respondents' motion for a protective order, at page 12, the court wrote:

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> [T]here is evidence from which it may be inferred that the **defendants have not acted in good faith**. On August 28, 2012, the SEC served the defendants with a Wells Notice, alerting them that an enforcement action was imminent; Gibraltar's board purported to dissolve the company the very next day. And, although Gibraltar commended a proceeding in the Bahamas on September 16, 2013, seeking to force the SCB to recognize the liquidation, it has apparently taken no action to move the case since then …. (Emphasis added).

Exhibit H: Order Denying Respondents' Motion. Respondents also refused to be deposed by Division counsel, and the court had to order the depositions of Davis and Gibraltar's corporate representative to proceed as scheduled in New York.

Exhibit I: Motion for Sanctions and Default Judgment. Respondents failed to comply with the court's order to produce the required documents (*see* Ex. G at 13), refused to appear for the court-ordered depositions, and stated that they would *not* participate in the litigation. The Division then filed a motion for sanctions and entry of default judgment.

Exhibit J: Memorandum of Law in Support of Sanctions and Default Judgment. The Divisions's Memorandum explained how respondents violated Section 15(a)(1) of the Exchange Act and Section 5 of the Securities Act. In addition, it detailed respondents' misconduct during the litigation, which prevented the Division from obtaining a full accounting of the millions of dollars respondents earned through their misconduct. The Division also included the following six attachments with relevant evidence, *briefly* described below:

Exhibit 1: Gibraltar's website as produced by respondents (*see* Ex. J at 2 n.2).[5]

- Presented Gibraltar as a broker-dealer, investment manager, and advisory firm.
- Claimed Davis was a professional trader and portfolio manager with over 13 years of experience, having previously worked at "TD Waterhouse, CIBC Mellon, and Fidelity."
- Offered "ancillary financial services, including incorporation of International Business Corporations (IBCs), Registered Agent and Officer services."

[5] On September 8, 2010, during the investigation, Division Staff downloaded and preserved a color copy of Gibraltar's public-facing website from the United States. For ease of review, a color copy of that file is being provided to the Commission as **Exhibit J-1** to this additional briefing.

- Offered a way to "trade on most stock exchanges in the world at a cost equivalent to that using mainland brokers, **without paying taxes on the profits**." (Emphasis added).
- Promised clients they could "trade online via the internet of by placing orders by email, fax or phone."
- Promised to adhere "to a **strict confidentiality and non disclosure** policies, [such that] all client information is maintained in **complete privacy**." (Emphasis added).
- Repeated in the FAQ portion of the website that "**[c]onfidentiality is paramount to Gibraltar** . . . . **All information regarding your GGSI account will be treated in the strictest of confidence**." (Emphasis added).
- Facilitated the transfer of securities from other broker-dealers to a Gibraltar account, asserting that the client could "DTC the securities to us" but explained that client should "send [the] certificates along with a signed Stock Power of Attorney."
- Showed price-volume graphs of the the Dow Jones, SP 500, Nasdaq and NYSE indexes.

Exhibits 2 and 3: Copies of the Division's various deposition notices for respondents.

Exhibit 4: ATTESTATION, dated March 24, 2015, that after a diligent search of the files of the Commission, no registration statement were received or in effect with respect to MDOR shares during the period of December 28, 2007 to December 31, 2009.

Exhibit 5: ATTESTATION, dated March 24, 2015, that after a diligent search of the files of the Commission, no registration statements were received or in effect with regards to resale by Gibraltar Global Securities Inc., and other persons identified, of any shares of MDOR during the period of December 28, 2007 to December 31, 2009.

Exhibit 6: Wells Submission by Davis and Gibraltar, dated October 19, 2012, which admitted that as part of Gibraltar's business, it executed "trades for its clients through correspondent accounts held in various jurisdictions, including the United States …. [and] Gibraltar receive[d] a usual and customary commission of 2-3% on each transaction."

Exhibit K: Declaration of Gary L. Peters. An Assistant Chief Accountant at the Division, Mr. Peters quantified the proceeds of securities sales for the period of March 2008 to August 2012 that Gibraltar admitted to in its answer (Ex. F ¶¶ 20, 23) and that flowed from Gibraltar's bank account at Royal Bank of Canada Nassau to its United States customers. In his declaration, Mr. Peters

explained how he conducted his review and analysis, based on information obtained from JPMorgan Chase through a subpoena, which included a "spreadsheet consisting of all wires originated/received on behalf of Gibraltar Global Securities via its account with Royal Bank of Canada Nassau, … for the period between 1/1/2008 to present." Ex. K ¶3.[6] In summary, Mr. Peters' analysis showed approximately $117 million of outgoing wires to United States recipients, and approximately $195 million of outgoing wires to other recipients. Ex. K ¶15. In addition, as respondents also admitted in their answer (Ex. F ¶¶25-27;29), Mr. Peters calculated Gibraltar's proceeds of securities sales that ultimately were sent to Magnum d'Or by Gibraltar. Ex. K ¶23. In total, Mr. Peters identified a total of $7,175,757 that Gibraltar sent to the Magnum d'Or companies. *Id.* Ultimately, Mr. Peters calculated a total disgorgement of $31,737,811. *Id.* ¶27.

Exhibit L: Supplemental Declaration of Gary L. Peters. After his declaration, Mr. Peters learned that in an earlier SEC civil enforcement action, related to the same unregistered offering of Magnum d'Or securities—*SEC v. Magnum d'Or Resources, Inc.*, *et al.*, 11-CV-60920 (S.D. Fla)—another defendant paid $80,742 in disgorgement. Ex. L ¶1. The *Magnum d'Or* case and its defendants are addressed in the complaint against Davis and Gibraltar. *See* Ex. A ¶¶10-14 ("Other Relevant Entitities"). Mr. Peters recalculated a total disgorgement of $31,560,966. Ex. L ¶5.

Exhibit M: Complaint in *SEC v. Magnum d'Or*. In this related enforcement action, the Division's complaint explained how the individual defendants, U.S. citizens, used their accounts with Gibraltar to wire over $7 million of the proceeds from their scheme to Magnum's bank accounts and to transfer proceeds to one another. Ex M ¶¶20-22.

[6] The Division maintains the JPMorgan Chase spreadsheet with 8,641 rows and 42 columns of data, as well as Mr. Peter's work-product based on the spreadsheet, which shows hundreds of U.S. customers as Gibraltar's clients and using its services during the relevant time period. If necessary, the Division can provide the electronic spreadsheet to the Commission for its review.

Exhibit N: Motion to Set Disgorgement in *SEC v. Magnum d'Or*. In the request for entry of a final judgment for two of the individual defendants, some of the allegations in the complaint were deemed admitted for purposes of the motion. Ex. N at p.4. In short, defendants admitted that Magnum issued them stock pursuant to false Form S-8 registration statements that claimed that defendants were being compensated for consulting services when, in fact, defendants provided few or no permissible consulting services in exchange for the stock. *Id.* at 4-5. After receiving the Magnum d'Or stock, defendants deposited their shares at Gibraltar, sold the shares within a few days, and then wired the proceeds to Magnum from their Gibraltar accounts or from their personal bank accounts under the guise of loans. *Id*. at p.6. In support of this motion, the Division included as Exhibit 1 the Declaration of Karaz S. Zaki, a Staff Accountant with the Commission.

Exhibit 1: Declaration of Karaz S. Zaki which included, as attachments B, C, and D, copies of the Gibraltar brokerage account statements for defendants—U.S. citizens—and detailed the deposit and transfer of MDOR shares or related proceeds from those Gibraltar accounts.

Exhibit O: Declaration of Robert Giallombardo. A Senior Counsel at the Division who participated in the investigation of respondents that led to the filing of the underlying civil action, Mr. Giallombardo included copies of Internal Revenue Service ("IRS") W-8BEN withholding forms where Davis falsely certified Gibraltar as the beneficiary of the income generated in the accounts of various U.S. brokers. Mr Giallombardo also reviewed Exhibit J-1 and confirmed it to be a copy of the screenshots he saved from Gibraltar's public-facing website on or about September 8, 2010.

II. Associational and Penny Stock Bars Are in the Public Interest

The available evidence from the Commission's underlying civil action against Davis and Gibraltar, as well as from the earlier and related case against Magnum d'Or and others, desmonstrates that associational and penny stock bars against Davis and Gibraltar are in the public interest.

The egregiousness of respondents' actions is clear. Davis and Gibralter explicitly promised their customers—including U.S. citizens—complete anonymity and the ability to avoid paying taxes on their profits. *See* Ex. J-1. To help circumvent tax obligations, Davis personally submitted IRS W-8BEN withholding forms to its U.S. brokers falsely certifying that Gibraltar, not a U.S. person, was the owner of the income related to the securities accounts, when in fact he knew the beneficiary to be a U.S. customer. *See* Ex. O. As demonstrated by the Peters Declaration, respondents' marketing and business practices resulted in about $117 million in proceeds sent by Gibraltar to U.S. customers during the relevant period, including the over $7 million Gibraltar sent to Magnum d'Or for the unregistered offering of a penny stock. *See*, *e.g.*, Ex. K ¶¶17, 23. Respondents' actions were therefore not an isolated or limited incident of misconduct, but a planned and well-executed course of business that lasted over 4 years and generated at least $14.5 million for respondents in ill gotten gains from U.S. customers. *Id.* ¶27. Because respondents refused to produce any information about their U.S. customers during the underlying civil action, or to appear for their deposition or participate in the case, the full amount of respondent's ill gotten gains from their misconduct remains unknown to this day. *See* Exs. G-I.

While scienter is not an element of the underlying offenses, the evidence demonstrates a high degree of scienter by respondents in this matter, which is relevant to the requested sanctions. As the court noted in the underlying civil action, some evidence led to an inference the respondents did not act in good faith in this matter. *See* Ex. G. Indeed, when respondents learned of the investigation by the Division after receiving a Wells notice, Gibraltar's board of directors attempted the very next day to dissolve the company in a clear attempt to avoid further scrutiny or liabiliy, but then failed to properly prosecute the company's liquidation case in the Bahamian courts. *Id.* Similarly, respondents obstructed the Division's underlying litigation in district court and defied two separate court orders

by refusing to produce documents about their U.S. customers or appear for depositions. *See* Ex. I. Finally, Davis' submission of false IRS W-8BEN forms clearly demonstrates his culpable mental state. *See* Ex. O.

Respondents have also refused to acknowledge their misconduct, and therefore have provided no assurances against future violations. Instead, when the district court in the underlying civil action denied respondent's requests to avoid the production of documents and delay their depositions, respondents refused to participate in the litigation. In light of Davis' prior work experience, as previously detailed on Gibraltar's website, and the scienter he exhibited in this matter, it is possible if not likely that he may attempt yet again to work as a broker dealer and commit additional violations in the future. Gibraltar's future as a viable company remains doubtful due to the previously initiation of dissolution proceedings in the Bahamas, which the Division understands is still pending. However, as long as Gibraltar remains as a viable entity, which is wholly owned and controlled by Davis, there is a high risk that Gibraltar could commit additional violations in the future. Therefore, the requested sanctions as to both respondents are warranted and in the public interest.

III. Conclusion

For the foregoing reasons, after an application of the *Steadman* factors, the Division respectfully asks that in addition to the entry of default against respondents, that sanctions be imposed barring them from: (i) association with any broker or dealer;[7] and (ii) participating in any offering of a penny stock.

[7] The Division is not seeking to bar respondents from associating with investment advisers, municipal securities dealers, or transfer agents because their conduct in this matter originated before the passage of the Dodd-Frank Act. *See Bartko v. Sec. & Exch. Comm'n*, 845 F.3d 1217, 1226 (D.C. Cir. 2017).

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its attorney,

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Dated: May 24, 2023

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Division's Additional Briefing in Support of Renewed Motion for Default and Remedial Sanctions was served on this 24th day of May, 2023, in the manner indicated below:

By Email:

[redacted]
Warren A. Davis
[redacted]

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INDEX OF ATTACHMENTS TO ADDITIONAL BRIEFING IN SUPPORT OF RENEWED MOTION FOR DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS

Attachment	Description
F	Answer to the Complaint by Davis and Gibraltar, dated April 24, 2014
G	Memorandum and Order Denying Proctive Order, dated April 1, 2015
H	Order Denying Protective Order as to Depositions, dated April 2 2015
I	Motion for Sanctions and Default Judgment, dated June 12, 2015
J	MOL in Support of Sanctions and Default Judgment, dated June 12, 2015
J-1	Copy of Preservation of Gibraltar's Website, dated September 8, 2010
K	Declaration of Gary L. Peters, signed June 11, 2015
L	Supplemental Declaration of Gary L. Peters, signed September 9, 2015
M	Complaint against Magnum d'Or and others, dated April 29, 2011
N	Motion and MOL to Set Disgorgement and Penalties, dated March 30, 2012
O	Declaration of Robert Giallombardo, signed May 24, 2023

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