

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 95115 / June 16, 2022

Admin. Proc. File No. 3-19719

In the Matter of

YANIV AVNON, RAN ARMON, and  
G SIX TRADING Y.R LTD.

ORDER REQUESTING ADDITIONAL BRIEFING AND MATERIALS

On February 28, 2020, the Commission issued an order instituting administrative proceedings (“OIP”) against Yaniv Avnon pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> Avnon was subsequently served with the OIP, but failed to file an answer to it. On April 4, 2022, the Commission issued an order requiring Avnon to show cause by April 18, 2022, 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 or to otherwise defend the proceeding.<sup>2</sup> On May 16, 2022, after Avnon failed to respond, the Division filed a motion for default and imposition of sanctions.

The Division’s motion for default requested that the Commission bar Avnon from the securities industry and from participating in any offering of penny stock based on the record and the allegations in the OIP. The motion recited that, on October 31, 2019, a default judgment was entered against Avnon permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933; Exchange Act Section 10(b), 15(a)(1), and 20(b); and Exchange Act Rule 10b-5.<sup>3</sup> To support its motion, the Division relied on materials attached as exhibits to the

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<sup>1</sup> *Yaniv Avnon*, Exchange Act Release No. 88305, 2020 WL 977941 (Feb. 28, 2020). The OIP also instituted proceedings against Ran Armon, who previously settled with the Commission, and against G Six Trading Y.R Ltd., as to which the Commission dismissed the proceedings. *Yaniv Avnon*, Exchange Act Release No. 94147, 2022 WL 343451 (Feb. 3, 2022) (dismissing proceedings as to G Six Trading Y.R Ltd.); *Yaniv Avnon*, Exchange Act Release No. 93932, 2022 WL 73842 (Jan. 7, 2022) (accepting offer of settlement as to Ran Armon).

<sup>2</sup> *Yaniv Avnon*, Exchange Act Release No. 94598, 2022 WL 1014834 (Apr. 4, 2022).

<sup>3</sup> *SEC v. Chamroonrat*, 2:16-cv-09403-KM-AME (D.N.J. Oct. 31, 2019), ECF No. 28; *see also Avnon*, 2020 WL 977941, at \*1 (referencing same).

motion: the complaint in the underlying civil action, the district court's default judgment enjoining Avnon, and proof of service of the OIP.

When determining whether remedial action, such as an industry bar, is in the public interest under Exchange Act Section 15(b), the Commission must consider the question with reference to the underlying facts and circumstances of the case.<sup>4</sup> 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.<sup>5</sup> 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."<sup>6</sup>

The Division relies in part on the allegations of the OIP with respect to the injunctive action against Avnon to support its request for sanctions. When a respondent defaults, the Commission may deem an OIP's allegations to be true.<sup>7</sup> But the OIP here recounts the allegations of the Commission's complaint. It does not independently allege that Avnon engaged in particular misconduct.<sup>8</sup> Entering Avnon's default would not appear to permit the Commission to deem true the allegations of the Commission's complaint in the injunctive action.

The Division also relies on the default judgment enjoining Avnon 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.<sup>9</sup>

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

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<sup>4</sup> See *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

<sup>5</sup> 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).

<sup>6</sup> See *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (vacating and remanding suspension for failing to meet this standard).

<sup>7</sup> See Commission Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), 201.220(f).

<sup>8</sup> *Avnon*, 2020 WL 977941, at \*1 (stating, for example, that the "[Commission's] Complaint alleged that Respondents, with others, pocketed . . . customers' deposits and used the money for personal expenses and for Ponzi-like payments to customers who wanted to close their accounts").

<sup>9</sup> 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.").

industry and penny stock bars are warranted. The Division should address each statutory element of the relevant provisions of Section 15(b) of the Exchange Act.<sup>10</sup> The Division's brief should 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.<sup>11</sup>

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 July 18, 2022, as well as a brief not to exceed 5,000 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 Avnon may file a brief by August 17, 2022, not to exceed 5,000 words, addressing the same matters to be addressed by the Division. Avnon'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.<sup>12</sup> Avnon 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.<sup>13</sup> If Avnon 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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<sup>10</sup> See, e.g., *Shawn K. Dicken*, Exchange Act Release No. 89526, 2020 WL 4678066, at \*2 (Aug. 12, 2020) (requesting additional information from the Division “regarding the factual predicate for Dicken’s convictions” and “why these facts establish” the need for remedial sanctions); see also *Shawn K. Dicken*, Exchange Act Release No. 90215, 2020 WL 6117716, at \*1 (Oct. 16, 2020) (clarifying the additional information needed from the Division).

<sup>11</sup> See generally *Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012) (requiring “meaningful explanation for imposing sanctions”); *McCarthy v. SEC*, 406 F.3d 179, 190 (2d Cir. 2005) (stating that “each case must be considered on its own facts”); *Gary McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at \*1, \*3 (Apr. 23, 2015); *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at \*2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016); *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at \*3-4 (Feb. 4, 2010), *appeal after remand*, Exchange Act Release No. 63720, 2011 WL 121451, at \*5-8 (Jan. 14, 2011).

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

<sup>13</sup> Rules of Practice 155, 180, 17 C.F.R. § 201.155, .180.