

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 5722 / April 16, 2021

Admin. Proc. File No. 3-20198

In the Matter of  
  
MICHELLE MORTON

ORDER TO SHOW CAUSE

On January 6, 2021, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Michelle Morton pursuant to Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> On March 16, 2021, the Division of Enforcement filed a motion for entry of default and leave to file a motion for summary disposition. The Division’s motion states that service of the OIP was made on Morton on January 11, 2021.<sup>2</sup>

As stated in the OIP, Morton’s answer to the OIP was required to be filed within 20 days of service of the OIP.<sup>3</sup> As of the date of this order, Morton has not filed an answer or responded to the Division’s motion. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Morton is ORDERED to SHOW CAUSE by April 30, 2021, why the Commission should not find her in default due to her failure to file an answer and to otherwise defend this proceeding. 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>4</sup> The OIP informed Morton that a failure to file an answer could result in her being deemed in default and the proceedings determined against her.<sup>5</sup>

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<sup>1</sup> *Michelle Morton*, Advisers Act Release No. 5663, 2021 WL 62247 (Jan. 6, 2021); *see* 15 U.S.C. § 80b-3(f).

<sup>2</sup> *See* Commission Rule of Practice 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i) (service on individuals).

<sup>3</sup> *Morton*, 2021 WL 62247, at \*2; *see* Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

<sup>4</sup> Rules of Practice 155, 180, 17 C.F.R. § 201.155, .180.

<sup>5</sup> *See Morton*, 2021 WL 62247, at \*2.

If Morton files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Morton does not file a response, the Division shall file a motion for entry of an order of default and the imposition of remedial sanctions by May 28, 2021.<sup>6</sup> The motion for sanctions should address each statutory element of Section 203(f) of the Investment Advisers Act of 1940.<sup>7</sup> The motion should also 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>8</sup> The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.<sup>9</sup> The failure to timely oppose a dispositive motion is itself a basis for a finding of default;<sup>10</sup> it may result in the determination of particular claims, or the proceeding as a

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<sup>6</sup> We deny the Division’s request for leave to file a motion for summary disposition as unnecessary. When a respondent defaults, the Division generally should file a motion for entry of default and remedial sanctions. *See, e.g., Salvadore D. Palermo*, Exchange Act Release No. 91301, 2021 WL 933260, at \*1 (Mar. 11, 2021); *Lawrence Allen DeShetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at \*1 (Nov. 21, 2019). We recognize that, at times, we have referred to such a motion as a “motion for summary disposition on the issue of remedial sanctions.” *E.g., Steven Pagartanis*, Exchange Act Release No. 90781, 2020 WL 7632297, at \*1 (Dec. 22, 2020). But a motion for summary disposition can be filed only after the respondent files an answer. Rule of Practice 250(b)-(c), 17 C.F.R. § 201.250(b)-(c); *see also Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 78319 (July 13, 2016), 81 Fed. Reg. 50,212, 50,224 (July 29, 2016) (same). We see no need to waive this requirement here because the Division may file a motion for sanctions if Morton does not respond to this order.

<sup>7</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>8</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 L. 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>9</sup> *See* Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

<sup>10</sup> *See* Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); *see, e.g., Behnam Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at \*3 n.12 (Jan. 3, 2017).

whole, adversely to the non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.<sup>11</sup>

The parties' attention is called to the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that pending further order of the Commission parties to the extent possible shall submit all filings electronically at [apfilings@sec.gov](mailto:apfilings@sec.gov).<sup>12</sup> Also, the Commission's Rules of Practice were recently amended to include new e-filing requirements, which took effect on April 12, 2021.<sup>13</sup>

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman  
Secretary

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<sup>11</sup> See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at \*3-5 (Sept. 29, 2017); *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at \*2-3 (Mar. 30, 2017), *abrogated in part on other grounds by Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at \*1 n.6 (Apr. 13, 2006).

<sup>12</sup> *Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.

<sup>13</sup> *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-12-30/pdf/2020-25747.pdf>; see also *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments also impose other obligations on parties to administrative proceedings such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.