

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20950**

**In the Matter of**

**MICHELLE MACCIO**

**Respondent.**

**DIVISION OF ENFORCEMENT'S RESPONSE TO COMMISSION ORDER**  
**REQUESTING ADDITIONAL BRIEFING DATED NOVEMBER 4, 2024**

The Division of Enforcement hereby responds to the Commission's Order Requesting Additional Briefing dated November 4, 2024.

## **I. BACKGROUND**

On August 9, 2022, the Commission issued an order instituting proceedings ("OIP") against Michelle Maccio pursuant to Section 203(f) of the Investment Advisers Act of 1940. *Michelle Maccio*, Inv. Adv. Rel. No. 6081 (Aug. 9, 2022). Specifically, the OIP alleged that the California Department of Financial Protection and Innovation ("DFPI") issued an order barring Maccio from holding "any position of employment, management, or control of any investment adviser" after a hearing. Maccio never responded to the OIP despite the Commission ordering her to do so by December 12, 2022. On May 24, 2023, the Division of Enforcement filed a motion seeking default judgment, but inadvertently cited to Advisers Act Section 203(e)(2), which relates to criminal convictions, rather than Section 203(e)(9), which relates to state regulatory actions, as the basis for the Commission's authority to bar Maccio pursuant to Section 203(f). On November 4, 2024, the Commission ordered additional briefing on which, if any, subpart of Section 203(e) provides a basis for seeking remedial sanction against Maccio under Section 203(f), with reference to relevant legal authority. *Michelle Maccio*, Inv. Adv. Rel. No. 6764 (Nov. 4, 2024). The Division of Enforcement's response to that order is set forth below and incorporates its May 24, 2023 motion for default judgment.

## **II. ARGUMENT**

The Division of Enforcement seeks remedial sanctions pursuant to Section 203(e)(9) of the Advisers Act, which provides that the Commission may impose remedial sanctions, after notice and opportunity for hearing, on any person subject to a final order, *inter alia*, of a State securities commission (or any agency performing like functions).

As detailed in the Division of Enforcement's motion for default judgment, Maccio is subject to such an order. On December 14, 2012, the DFPI issued a final order, after a hearing on the matter entitled *The Commissioner of Financial Protection and Innovation v. Maccio Financial LL and Michelle Macchio*, Agency Case Number 169793. See Declaration of Lynn Dean In Support of Division of Enforcement's Motion for Entry of Default Judgment and Sanctions ("Dean Decl."), Ex. 2. Among other things, the DFPI Order barred Maccio from holding "any position of employment, management, or control or any investment adviser." *Id.* The DFPI also found that Maccio had violated the California Corporations Code Section 25235(b), which provides that it is unlawful for an investment adviser "to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any client or prospective client. *Id.*

For all the reasons previously set forth in the Division of Enforcement's motion for default judgment, the imposition of a permanent bar against Macchio is appropriate under Section 203(e)(9) of the Advisers Act based on the final order entered against her by the California DFPI. See *Bruce C. Worthington*, Exch. Act. Rel. No. 98789 (Oct. 24, 2023); *Mitchell M. Maynard*, Inv. Adv. Rel. No. 2875 (May 15, 2009); accord *Aaron Jousan Johnson*, Initial Dec. Rel. No. 608 (June 2, 2014); *Nicholas Rowe*, Initial Dec. Rel. No. 746 (Feb. 27, 2015).

November 25, 2024

Respectfully submitted,

A redacted signature of Donald Searles, consisting of a solid black rectangular box.

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## CERTIFICATE OF SERVICE

I certify that on November 25, 2024, I caused the foregoing document to be served on the following persons, by electronic mail, facsimile, or by U.S. Postal Service Express Mail as stated: DIVISION OF ENFORCEMENT'S RESPONSE TO COMMISSION ORDER REQUESTING ADDITIONAL BRIEFING DATED NOVEMBER 4, 2024

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A large black rectangular redaction box covers the signature area of Donald Searles.

Donald Searles