

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 5433 / January 14, 2020

Admin. Proc. File No. 3-18943

In the Matter of  
  
MARK J. MOSKOWITZ

ORDER

On December 20, 2018, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Mark J. Moskowitz pursuant to Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> The OIP directed Moskowitz to file an answer to the allegations contained therein within 20 days of service of the OIP.<sup>2</sup> The OIP also called the parties’ attention to Commission Rule of Practice 151(b), which provides that “[f]iling of papers with the Commission shall be made by filing them with the Secretary.”<sup>3</sup> The OIP also “request[ed] that an electronic courtesy copy of each filing should be emailed to [APFilings@sec.gov](mailto:APFilings@sec.gov) in PDF text-searchable format.”<sup>4</sup>

Although Moskowitz was served with the OIP by December 27, 2018, he failed to file an answer to it. On April 30, 2019, the Division of Enforcement filed a motion for entry of default and requested that the Commission bar Moskowitz from the securities industry based on the record and the allegations in the OIP. The Division attached to this motion an email from Moskowitz acknowledging receipt of the OIP, stating that he was incarcerated, and requesting that, because of anticipated difficulties defending himself while in prison and his pro se status, the Division “hold off on proceedings” until his anticipated release.<sup>5</sup> Moskowitz did not file a motion seeking relief from the Commission.

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<sup>1</sup> *Mark J. Moskowitz*, Advisers Act Release No. 5081, 2018 WL 6696603, at \*1 (Dec. 20, 2018), available at <https://www.sec.gov/litigation/admin/2018/ia-5081.pdf>.

<sup>2</sup> *See id.* at \*2.

<sup>3</sup> *See id.* at \*3; Rule of Practice 151(b), 17 C.F.R. § 201.151(b). Our current Rules of Practice are available at <https://www.sec.gov/about/rulesofpractice.shtml>.

<sup>4</sup> *See Moskowitz*, 2018 WL 6696603, at \*3.

<sup>5</sup> Moskowitz was released later in 2019, and he has now provided the Office of the Secretary with his current mailing address.

On June 4, 2019, the Commission entered an order directing Moskowitz to show cause by July 19, 2019, why the Commission should not find him in default (“Show Cause Order”).<sup>6</sup> The Show Cause Order advised Moskowitz 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>7</sup> The Show Cause Order also observed that the OIP previously had informed Moskowitz that a failure to file an answer could result in him being deemed in default and the proceedings determined against him.<sup>8</sup> And the Show Cause Order explained that because the failure to timely oppose a dispositive motion is also a basis for a finding of default,<sup>9</sup> such a failure may result in the determination of particular claims, or the proceeding as a whole, adversely to the non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.<sup>10</sup>

The Show Cause Order directed Moskowitz to make a submission addressing the reasons for his failure to timely file an answer or response to the Division’s motion, as well as the substance of the Division’s request for sanctions (including why the Commission should not bar him from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization pursuant to Advisers Act Section 203(f)).<sup>11</sup> Moskowitz did not timely respond to the Show Cause Order. Instead, on November 7, 2019, Moskowitz sent an email to the [APFilings@sec.gov](mailto:APFilings@sec.gov) mailbox with

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<sup>6</sup> *Mark J. Moskowitz*, Exchange Act Release No. 86029, 2019 WL 2354646, at \*1 (June 4, 2019), available at <https://www.sec.gov/litigation/opinions/2019/34-86029.pdf>.

<sup>7</sup> *Id.* (citing Rules of Practice 155, 180, 220, 17 C.F.R. §§ 201.155, .180, .220).

<sup>8</sup> *Id.* (citing *Moskowitz*, 2018 WL 6696603, at \*3).

<sup>9</sup> *Id.* (citing *Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at \*3 n.12 (Jan. 3, 2017)).

<sup>10</sup> *Id.* (citing *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at \*2-3 (Mar. 30, 2017); *Apollo Publ’n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at \*1 n.6 (Apr. 13, 2006); *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at \*3-5 (Sept. 29, 2017)).

<sup>11</sup> *Id.* at \*2.

an attached PDF file suggesting that he intended to defend the proceeding, which the Office of the Secretary subsequently forwarded to counsel at the Division of Enforcement.<sup>12</sup>

Although Moskowitz has not responded to the Show Cause Order, he has suggested that he would like to defend this proceeding.<sup>13</sup> In light of that suggestion, Moskowitz is ordered to file an answer to the allegations made in the OIP.<sup>14</sup> We direct Moskowitz's attention to the OIP, which contains the allegations against him.<sup>15</sup> Moskowitz is also ordered to make the filing directed by the Show Cause Order.<sup>16</sup> A failure to submit an answer or make the filing directed by the Show Cause Order may result in Moskowitz being held in default. We direct Moskowitz to the Show Cause Order for information about the consequences of default.<sup>17</sup>

Moskowitz's response to this order must be filed and served consistent with the Commission's Rules of Practice no later than February 4, 2020. If Moskowitz responds to this order, the Division may file a reply within 21 days after its service. Upon review of any filings

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<sup>12</sup> The parties are reminded that Rules of Practice 150 through 153 require, among other things, that parties serve papers on each other, attach a certificate of service that reflects such service, and file their papers with the Commission's Office of the Secretary. 17 C.F.R. §§ 201.150–.153; *see also supra* note 3 (identifying web address at which Rules of Practice are available). We also remind the parties that filings emailed to [APFilings@sec.gov](mailto:APFilings@sec.gov) are courtesy copies only, and are not substitutes for compliance with the Rules of Practice governing service and filing of papers. “[W]e expect even unrepresented parties to comply with our rules, to file all required papers, and to comply with all orders: ‘Parties, including those appearing pro se, are obligated to familiarize themselves with the Rules of Practice.’” *BDO China Dahua CPA Co., Ltd.*, Exchange Act Release No. 72134, 2014 WL 1871077, at \*3 (May 9, 2014) (quoting *Adopting Release, Rules of Practice*, Exchange Act Release No. 35833, 1995 WL 368865, at \*36 (June 9, 1995), 60 Fed. Reg. 32,738, 32,754 (June 23, 1995)).

<sup>13</sup> *Cf. Travis A. Branch*, Exchange Act Release No. 86285, 2019 WL 2775917, at \*2 (July 2, 2019) (ordering respondent to explain why he should not be deemed to be in default and why the proceeding should not be determined against him after determining that “it is premature to grant leave for the Division to file a motion for default and other relief”).

<sup>14</sup> *See* Rule of Practice 220(c), 17 C.F.R. § 201.220(c) (providing that “an answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the order instituting proceedings” and “must affirmatively state . . . any avoidance or affirmative defense . . .”).

<sup>15</sup> *See supra* note 1.

<sup>16</sup> *See supra* note 11 and accompanying text.

<sup>17</sup> *See supra* notes 6-10 and accompanying text.

in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final order resolving the matter.

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

Vanessa A. Countryman  
Secretary