

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 90983 / January 25, 2021

Admin. Proc. File No. 3-19335

In the Matter of  
MITCHELL B. DOW

ORDER TO SHOW CAUSE

On August 13, 2019, the Securities and Exchange Commission (“Commission”) issued an order instituting administrative proceedings (“OIP”) against Mitchell B. Dow pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> On February 3, 2020, the Division of Enforcement filed the Declaration of Lynn M. Dean stating that, consistent with Commission Rules of Practice 141(a)(2)(i),<sup>2</sup> service of the OIP was made on Dow on January 17, 2020.

As stated in the OIP, Dow’s answer was required to be filed within 20 days of service of the OIP.<sup>3</sup> Dow did not file an answer within that period and, on February 26, 2020, the Division filed a status report, and a declaration from Division staff, in which it represented that Dow would not be defending himself. The Division attached to its filing a February 4, 2020 email exchange with Dow’s counsel in which counsel, in response to the Division’s inquiry whether Dow intended “to appear and defend the action,” confirmed that Dow “will not be filing an Answer to the SEC administrative proceeding that has been filed against him.” The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Dow is ORDERED to SHOW CAUSE by February 8, 2021, 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 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

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<sup>1</sup> *Mitchell B. Dow*, Exchange Act Release No. 86639, 2019 WL 3814364 (Aug. 13, 2019).

<sup>2</sup> 17 C.F.R. § 201.141(a)(2)(i).

<sup>3</sup> *Dow*, 2019 WL 3814364, at \*2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

hearing.<sup>4</sup> The OIP informed Dow that a failure to file an answer could result in him being deemed in default and the proceedings determined against him.<sup>5</sup>

If Dow files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Dow does not file a response, the Division shall file a motion for default and other relief by March 8, 2021. The motion 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>6</sup> The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.<sup>7</sup> The failure to timely oppose a dispositive motion is itself a basis for a finding of default;<sup>8</sup> it 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>9</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>10</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.

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

<sup>5</sup> *Dow*, 2019 WL 3814364, at \*2.

<sup>6</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 (D.C. Cir. 2005) (“each case must be considered on its own facts”); *Gary McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at \*1 (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>7</sup> *See* Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

<sup>8</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).

<sup>9</sup> *See, e.g., McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at \*3-5 (Sep. 29, 2017); *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).

<sup>10</sup> *See Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.

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

Vanessa A. Countryman  
Secretary