

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 91538 / April 12, 2021

INVESTMENT ADVISERS ACT OF 1940  
Release No. 5716 / April 12, 2021

Admin. Proc. File No. 3-19323

In the Matter of  
  
SEAN KELLY

ORDER TO SHOW CAUSE

On August 7, 2019, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Sean Kelly pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> On October 22, 2020, the Division of Enforcement filed a status report, which states that service of the OIP was made on Kelly on October 15, 2020, by personal service.

As stated in the OIP, Kelly’s answer was required to be filed within 20 days of service of the OIP.<sup>2</sup> As of the date of this order, Kelly has not filed an answer. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Kelly is ORDERED to SHOW CAUSE by April 26, 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 hearing.<sup>3</sup> The OIP informed Kelly that a failure to file an answer could result in his being deemed in default and the proceedings determined against him.<sup>4</sup>

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<sup>1</sup> *Sean Kelly*, Exchange Act Release No. 86595, 2019 WL 3716361 (Aug. 7, 2019); *see* 15 U.S.C. § 78o(b); 15 U.S.C. § 80b-3(f).

<sup>2</sup> *Kelly*, 2019 WL 3716361, at \*2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

<sup>3</sup> Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

<sup>4</sup> *Kelly*, 2019 WL 3716361, at \*2.

If Kelly files a response to this order to show cause, the Division may file a reply within 21 days after its service. If Kelly does not file a response, the Division shall file a motion for default and other relief by May 24, 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>5</sup> The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.<sup>6</sup> The failure to timely oppose a dispositive motion is itself a basis for a finding of default;<sup>7</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>8</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>9</sup> Also, the

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<sup>5</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>6</sup> See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

<sup>7</sup> See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); *see, e.g., Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at \*3 n.12 (Jan. 3, 2017).

<sup>8</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>9</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>.

Commission's Rules of Practice were recently amended to include new e-filing requirements, which take effect on April 12, 2021.<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.

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> *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.