

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92733 / August 23, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5829 / August 23, 2021

Admin. Proc. File No. 3-19323

In the Matter of

SEAN KELLY

ORDER DIRECTING SUBMISSION FROM THE DIVISION OF ENFORCEMENT

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 1940.¹ On October 22, 2020, the Division of Enforcement filed a status report, which established that service of the OIP was made on Kelly on October 15, 2020. Kelly did not answer the OIP.

On April 12, 2021, the Commission issued an order requiring Kelly 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.² If Kelly did not file a response, the order required the Division to file a motion for default and other relief by May 24, 2021.³ Although Kelly has not responded to the order to show cause, the Division has not filed a motion for default and other relief.

Accordingly, the Division of Enforcement is ORDERED to file a motion for default and other relief by September 20, 2021. The motion for sanctions should address each statutory element of the relevant provisions of Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.⁴ The motion should discuss relevant authority relating to the legal basis for

¹ *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).

² *Sean Kelly*, Exchange Act Release No. 91538, 2021 WL 1351212, at *1 (Apr. 12, 2021).

³ *Id.*

⁴ *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

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.⁵ The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.⁶ The failure to timely oppose a dispositive motion is itself a basis for a finding of default;⁷ 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.⁸

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.⁹

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

Vanessa A. Countryman
Secretary

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).

⁵ *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).

⁶ *See* Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

⁷ *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).

⁸ *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), *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).

⁹ *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.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations 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.