

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5674 / January 27, 2021

Admin. Proc. File No. 3-19371

In the Matter of

PATRICK L. O'CONNOR

ORDER TO SHOW CAUSE

On August 22, 2019, the Securities and Exchange Commission (“Commission”) issued an order instituting administrative proceedings (“OIP”) against Patrick L. O’Connor.¹ On January 21, 2020, the Division of Enforcement filed a motion for entry of default and sanctions against O’Connor. The Division states that service of the OIP was made on O’Connor on August 26, 2019, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.² The Division further states that, on January 22, 2020, the Division received “a signed green card receipt from counsel for Mr. O’Connor showing that counsel had been served with a copy of the [OIP.]” The Division also states that it “received back a green card from the Federal Correctional Institution in Oxford, Wisconsin where Mr. O’Connor is currently incarcerated indicating that the Motion of Default was received.” The Division requests that the Commission find O’Connor in default and bar him from the securities industry based.

The Division attached to its motion a letter it received from O’Connor’s counsel stating that O’Connor, who is incarcerated, “is willing to enter into a consent or default type order whereby he would be barred from transacting business in the future for other persons as an investment adviser.” The record does not contain any subsequent communications between the parties.

As stated in the OIP, O’Connor’s answer was required to be filed within 20 days of service of the OIP.³ As of the date of this order, O’Connor has not filed an answer or a brief in

¹ *Patrick L. O’Connor*, Advisers Act Release No. 5327, 2019 WL 3975598 (Aug. 22, 2019).

² 17 C.F.R. § 201.141(a)(2)(i).

³ *O’Connor*, 2019 WL 3975598, at *2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), 160(b), .220(b).

opposition to the Division's motion despite the due dates for those filings having passed.⁴ The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, O'Connor is ORDERED to SHOW CAUSE by March 15, 2021, why the Commission should not find him in default due to his failure to file an answer, to respond to the Division's motion, or to otherwise defend this proceeding. O'Connor should address the reasons for his failure to timely file an answer or response to the Division's motion. He should also include a proposed answer to be accepted in the event that the Commission does not enter a default against him. O'Connor should further address 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)). O'Connor shall deliver any response, including any answer, to the proper prison authorities no later than the due date for forwarding to the Commission's Office of the Secretary.⁵ If O'Connor responds to this show cause order, the Division may file a reply within 21 days after its service.

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.⁶ The OIP informed O'Connor that a failure to file an answer could result in him being deemed in default and the proceedings determined against him.⁷ The failure to timely oppose a dispositive motion is itself a basis for a finding of default;⁸ 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.⁹

⁴ 17 C.F.R. §§ 201.155(b), 160.

⁵ See *Houston v. Lack*, 487 U.S. 266, 266 (1988) (under federal prison mailbox rule, "pro se prisoners' notice of appeal are 'filed' at moment of delivery to prison authorities for forwarding to district court"); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (noting that this "mailbox rule [applies] to other filings by pro se prisoners").

⁶ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁷ *O'Connor*, 2019 WL 3975598, at *2.

⁸ 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).

⁹ 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).

The parties' attention is called to the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that to the extent possible all filings should be submitted electronically at apfilings@sec.gov.¹⁰

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

¹⁰ 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>.