

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 5902 / November 3, 2021

Admin. Proc. File No. 3-20586

In the Matter of  
  
DANIEL B. KAMENSKY

ORDER SETTING BRIEFING SCHEDULE AND DIRECTING THE FILING OF  
PREHEARING CONFERENCE REPORT

On September 21, 2021, the Commission issued an order instituting proceedings (“OIP”) against Daniel B. Kamensky pursuant to Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> Kamensky filed an answer to the OIP on October 12, 2021. On October 29, 2021, the Division of Enforcement and Kamensky filed a joint letter in advance of the prehearing conference specified in the OIP.<sup>2</sup> In the letter, the Division stated that it advised Kamensky through counsel that it intended to file a motion for summary disposition pursuant to Commission Rule of Practice 250.<sup>3</sup> The joint letter further indicated that Kamensky intended to file an opposition to the Division’s motion. Kamensky requested 30 days to oppose the Division’s motion for summary disposition, and that the Division be given 15 days to file its reply.

On October 29, 2021, the Division filed its motion for summary disposition requesting that Kamensky be barred from the securities industry. Rule 250 provides that summary disposition is appropriate if “there is no genuine issue with regard to any material fact and . . . the

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<sup>1</sup> *Daniel B. Kamensky*, Advisers Act Release No. 5869, 2021 WL 4307299 (Sept. 21, 2021). The Commission also suspended Kamensky from appearing or practicing before it pursuant to Rule of Practice 102(e)(2), 17 C.F.R. § 201.102(e)(2). *Daniel B. Kamensky, Esq.*, Exchange Act Release No. 93090, 2021 WL 4307259, at \*1 (Sept. 21, 2021).

<sup>2</sup> *See Kamensky*, 2021 WL 4307299, at \*2.

<sup>3</sup> 17 C.F.R. § 201.250.

movant is entitled to summary disposition as a matter of law.”<sup>4</sup> An opposition to a motion for summary disposition should precisely specify the basis for that opposition, identify with particularity the material factual issues in dispute, and address relevant Commission precedent.<sup>5</sup>

It is appropriate to set the following briefing schedule for the Division’s motion for summary disposition. This schedule provides the parties with more time than generally provided in Rule of Practice 154(b) for the filing of opposition and reply briefs.<sup>6</sup>

Accordingly, IT IS ORDERED that Kamensky’s opposition is due by November 29, 2021, and the Division’s reply is due by December 14, 2021;<sup>7</sup> and it is further

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<sup>4</sup> 17 C.F.R. § 201.250(b). Motions for summary disposition may be made under Rule 250 after a respondent’s answer has been filed and documents have been made available to the respondent for inspection and copying pursuant to Rule of Practice 230. *Id.*; 17 C.F.R. § 201.230. Kamensky has answered the OIP, and the Division has represented that documents have been made available to Kamensky pursuant to Rule 230.

<sup>5</sup> *See, e.g., Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at \*11 & n.68 (Dec. 12, 2013) (discussing appropriateness of summary disposition in follow-on proceedings and providing citations), *petition denied*, 773 F.3d 89 (D.C. Cir. 2014); *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at \*4-6 (Sept. 26, 2007) (discussing unsuccessful attempt to oppose summary disposition), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

<sup>6</sup> *See* 17 C.F.R. § 201.154(b) (providing that briefs in opposition to a motion shall be filed within five days after service of the motion and reply briefs within three days after service of the opposition).

<sup>7</sup> Attention is called to Rules of Practice 150-153, 17 C.F.R. §§ 201.150-153, with respect to form and service, and Rule of Practice 250(e) and (f), 17 C.F.R. § 201.250(e) and (f), with respect to length limitations. *See also In re: Pending Admin. Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001, at \*1 Mar. 18, 2020) (stating that “pending further order of the Commission, all reasonable requests for extensions of time will not be disfavored as stated in Rule 161” (citing 17 C.F.R. § 201.161(b)(1)). The parties’ attention is also directed to the most recent amendments of the Commission’s Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements. *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.

ORDERED that by November 17, 2021, the parties shall file a statement advising the Commission of any agreements reached at the prehearing conference specified in the OIP. If a prehearing conference was not held, both parties shall file by that date a statement, jointly or separately, advising the Commission of that fact and of the efforts made to meet and confer.

Pursuant to Rule of Practice 180(c), a party's failure to file a brief or comply with this order may result in the Commission's determination of the matter at issue against that party, a finding of waiver, dismissal of the proceeding, or such other sanction as the Commission finds appropriate.<sup>8</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>8</sup> 17 C.F.R. § 201.180(c).