

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94557 / March 30, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 5988 / March 30, 2022

Admin. Proc. File No. 3-19726

In the Matter of

BRUCE C. WORTHINGTON

ORDER REQUESTING ADDITIONAL BRIEFING AND MATERIALS

On March 10, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Bruce C. Worthington pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.¹ Worthington was subsequently served with the OIP but failed to file an answer to it.

On July 22, 2021, after Worthington failed to answer the OIP, the Commission issued an order requiring Worthington to show cause by August 5, 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 or otherwise defend the proceeding.² Worthington was warned that, if he was found in default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against him upon consideration of the record. In the event that Worthington failed to respond to the order to show cause, the order directed the Division of Enforcement to file a motion for default and other relief by September 2, 2021.

On August 25, 2021, after Worthington failed to answer the OIP or respond to the show cause order, the Division filed a motion for default and imposition of sanctions against Worthington. The Division’s motion for default requested that the Commission bar Worthington from the securities industry based on the record and the allegations in the OIP. The motion recited that on June 24, 2019, the Massachusetts Securities Division issued an Order Adopting Presiding Officer’s Recommended Final Order for Entry of Default (“Final Order”) as to

¹ *Bruce C. Worthington*, Exchange Act Release No. 88347, 2020 WL 1231409 (Mar. 10, 2020).

² *Bruce C. Worthington*, Exchange Act Release No. 92464, 2021 WL 3110030 (July 22, 2021).

Worthington for violating the antifraud provisions of the Massachusetts Uniform Securities Act and regulations thereunder by misappropriating a customer's investment funds.³ The Final Order imposed a permanent bar on Worthington from associating or registering in Massachusetts as a broker-dealer, broker-dealer agent, investment advisor, investment advisor representative, or as a partner, officer, director, or control person of a broker-dealer or investment advisor. To support its motion, the Division attached as exhibits to the motion the Administrative Complaint in the underlying state action, the Final Order, and proof of service of the OIP.

When determining whether remedial action, such as an industry bar, is in the public interest under Exchange Act Section 15(b) and Advisers Act Section 203(f), the Commission must consider the question with reference to the underlying facts and circumstances of the case.⁴ The factors that the Commission considers are: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.⁵ Such analysis must do more than "recite[], in general terms, the reasons why [a respondent's] conduct is illegal," but rather "devote individual attention to the unique facts and circumstances of th[e] case."⁶

The Division relies in part on the allegations of the OIP with respect to the Massachusetts administrative action against Worthington to support its request for sanctions. When a respondent defaults, the Commission may deem an OIP's allegations to be true.⁷ But the OIP here recounts the allegations of the Massachusetts Securities Division's complaint; it does not independently allege that Worthington engaged in particular misconduct.⁸ Entering Worthington's default would not appear to permit the Commission to deem true the allegations of the complaint in the Massachusetts administrative action.

³ *Bruce C. Worthington*, Docket No. E-2018-0119 (Mass. Sec. Div. June 14, 2019); *see also Worthington*, 2020 WL 1231409, at *1 (referencing same).

⁴ *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

⁵ *See id.*; *see also Lawrence Allen DeShetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *2-3 (Nov. 21, 2019) (applying Steadman factors in follow-on proceeding).

⁶ *See McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (vacating and remanding suspension for failing to meet this standard).

⁷ *See Commission Rules of Practice* 155(a), 220(f), 17 C.F.R. §§ 201.155(a), 201.220(f).

⁸ *Worthington*, 2020 WL 1231409, at *1 (stating that the Massachusetts Securities Division's "Complaint alleged, among other things, that beginning in or about September 2006 and continuing until April 2018, Worthington fraudulently misappropriated the investment funds of at least one Massachusetts investor for his own personal use and benefit").

The Division also relies on the Final Order of the Massachusetts Securities Division imposing sanctions on Worthington for violating the Massachusetts Uniform Securities Act. But because that Final Order was entered by default, it does not have preclusive effect as to facts alleged in the Massachusetts Securities Division's complaint.⁹

Under the circumstances, the Commission would benefit from further development of the evidentiary record and additional briefing addressing the Division's arguments as to why an industry bar is warranted. The Division should address each statutory element of the relevant provisions of Exchange Act Section 15(b) and Advisers Act Section 203(f).¹⁰ The Division's brief 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.¹¹

Accordingly, it is ORDERED that the Division of Enforcement shall submit, as it deems necessary, any additional evidentiary materials that are relevant to its motion and determination of the public interest by April 29, 2022, as well as a brief not to exceed 5,000 words, explaining the relevance of those materials to its request and the public interest and containing specific citations to the evidence relied upon.

It is further ORDERED that Worthington may file a brief by May 31, 2022, not to exceed 5,000 words, addressing the same matters to be addressed by the Division. Worthington's brief should also address why he has failed to file an answer previously or to otherwise defend this

⁹ See *In re Strangie*, 192 F.3d 192, 194 n.2 (1st Cir. 1999) ("Whether a federal court is to accord collateral estoppel effect to a state court judgment is controlled by state law"); *Treglia v. MacDonald*, 717 N.E.2d 249, 253 (Mass. 1999) (holding that in Massachusetts default judgments are generally not given collateral estoppel effect because the issues have not been actually litigated).

¹⁰ 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 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).

¹¹ See generally *Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012) (requiring "meaningful explanation for imposing sanctions"); *McCarthy*, 406 F.3d at 190 (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).

proceeding, and why the Commission should not find him in default as a result.¹² Worthington is reminded that 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.¹³ If Worthington files a response to this order, the Division may file a reply within 14 days after its service.

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

Vanessa A. Countryman
Secretary

¹² See *supra* note 2 (show cause order warning Worthington that failure to respond may cause the Commission to find him in default, and noting that the OIP did the same).

¹³ Rules of Practice 155, 180, 17 C.F.R. § 201.155, .180.