

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 94992 / May 26, 2022

Admin. Proc. File No. 3-20504

In the Matter of  
  
MICHAEL VAX

ORDER SCHEDULING BRIEFS

On August 30, 2021, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Michael Vax pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> Vax was served with the OIP on January 21, 2022, and his answer was due 20 days thereafter.<sup>2</sup> On April 6, 2022, because Vax had not filed an answer, the Commission ordered that he show cause by April 20, 2022, why he should not be deemed to be in default and why this proceeding should not be determined against him.<sup>3</sup>

On April 20, 2022, the parties filed a joint stipulation stating that Vax “recently hired counsel to represent him in this proceeding,” and that the parties agreed, if approved by the Commission, that the time for Vax to file an answer be extended to May 11, 2022. After the Commission discharged the order to show cause and granted Vax an extension of time to file his answer,<sup>4</sup> Vax filed a Response to Penalty Proposed on May 11, 2022. We will construe Vax’s Response to Penalty Proposed as his answer to the OIP.

The parties held a prehearing conference on May 20, 2022, and then submitted a joint statement regarding it on May 24, 2022. In the joint statement, the parties agreed “that this proceeding can be resolved by motion for summary disposition.” The parties also submitted a proposed briefing schedule for such motions pursuant to Commission Rule of Practice 250.<sup>5</sup>

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<sup>1</sup> *Michael Vax*, Exchange Act Release No. 92819, 2021 WL 3894484 (Aug. 30, 2021).

<sup>2</sup> *Vax*, 2021 WL 3894484, 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> *Michael Vax*, Exchange Act Release No. 94621, 2022 WL 1032831 (Apr. 6, 2022)

<sup>4</sup> *Michael Vax*, Exchange Act Release No. 94846, 2022 WL 1421487 (May 4, 2022).

<sup>5</sup> See 17 C.F.R. § 201.250(b) (providing that summary disposition is appropriate if “there is no genuine issue with regard to any material fact and . . . the movant is entitled to summary

Based on the parties' agreement, it is appropriate to set the following briefing schedule for the motions for summary disposition. Accordingly, IT IS ORDERED that the any motion for summary disposition shall be filed by June 10, 2022; any opposition shall be filed by July 13, 2022; and any reply shall be filed by July 27, 2022.<sup>6</sup>

An opposition to a motion for summary disposition should precisely specify in the brief the basis for that opposition, identify with particularity the material factual issues in dispute, and address relevant Commission precedent.<sup>7</sup> 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, entry of default, dismissal of the proceeding, or the prohibition of the introduction of evidence or the exclusion of testimony regarding the matter at issue.<sup>8</sup>

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.<sup>9</sup>

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disposition as a matter of law"). Motions for summary disposition may be made under Rule 250(b) 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. The parties should promptly inform the Commission if that has not yet occurred.

<sup>6</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. § 250(e) and (f), with respect to length limitations. *See also In re: Pending Admin. Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (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))).

<sup>7</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), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Conrad P. Seghers*, Investment Advisers Act Release No. 2656, 2007 WL 2790633, at \*4-6 (Sept. 26, 2007) (discussing unsuccessful attempt to oppose summary disposition), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

<sup>8</sup> 17 C.F.R. § 201.180(c).

<sup>9</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.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.

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

Vanessa A. Countryman  
Secretary