

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96220 / November 3, 2022

Admin. Proc. File No. 3-21000

In the Matter of

MICHAEL JAMES FERGUSON JR. FOREIGN
PRIVATE TRUST

ORDER TO SHOW CAUSE

On August 25, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against the Michael James Ferguson Jr. Foreign Private Trust (the “Trust”) pursuant to Section 17A(c) of the Securities Exchange Act of 1934.¹ The OIP directed the Trust to file an answer to the allegations contained therein within 20 days of service of the OIP.²

On October 25, 2022, the Division of Enforcement filed a declaration stating that, on September 2, 2022, it served the OIP on the Trust by certified mail at the addresses listed on its most recent registration form, pursuant to Rule of Practice 141(a)(2)(iii), which provides that service on a registered transfer agent “may be made . . . by sending a copy of the order addressed to the most recent business address shown on the person’s registration form by U.S. Postal Service certified . . . mail and obtaining a confirmation of attempted delivery.”³ As of the date of this order, which is more than 20 days since service of the OIP, the Trust has not filed an answer. It is thus appropriate to require the Trust to show cause why it should not now be found in default.

¹ *Michael James Ferguson Jr. Foreign Private Trust*, Exchange Act Release No. 95600, 2022 WL 3703815 (Aug. 25, 2022); *see* 15 U.S.C. § 78q-1(c).

² *Michael James Ferguson Jr. Foreign Private Trust*, 2022 WL 3703815, at *2.

³ *See* 17 C.F.R. §§ 201.141(a)(2)(iii).

Accordingly, the prehearing conference and the hearing are continued indefinitely and the Trust is ORDERED to SHOW CAUSE by November 17, 2022, why it should not be deemed to be in default and why this proceeding should not be determined against it due to its failure to file an answer and to otherwise defend this proceeding. The Trust's submission shall address the reasons for its failure to timely file an answer and include a proposed answer to be accepted in the event that the Commission does not enter a default against it.

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.⁴ The OIP informed the Trust that a failure to file an answer could result in deeming the Trust in default and determining the proceeding against it.⁵

If the Trust files a response to this order to show cause, the Division may file a reply within 14 days after its service. If the Trust does not file a response, the Division shall file a motion for entry of an order of default and the imposition of remedial sanctions by December 15, 2022. The motion for sanctions should: address each statutory element of the relevant provisions of Exchange Act Section 17A(c);⁶ provide evidence supporting the specific allegations in Section II.B. of the OIP, including any copies of requests for documents previously sent by Commission staff to the Trust;⁷ and 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.⁸ The parties may

⁴ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁵ *Michael James Ferguson Jr. Foreign Private Trust*, 2022 WL 3703815, at *2.

⁶ *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).

⁷ *See, e.g., The Northgate Nobles Greenhouse ABE Foreign Grantor Trust*, Exchange Act Release No. 95897, 2022 WL 4445479 (Sept. 23, 2022) (requesting explanation of allegation regarding records that had been requested from a transfer agent); *Fidelity Transfer Servs., Inc.*, Exchange Act Release No. 90674, 2020 WL 7364200 (Dec. 15, 2020) (ordering explanation of and evidence supporting OIP’s allegation that requested records at issue were required to be maintained).

⁸ *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 L. 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*

file opposition and reply briefs within the deadlines provided by the Rules of Practice.⁹ The failure to timely oppose a dispositive motion is itself a basis for a finding of default;¹⁰ 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.¹¹ 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.¹²

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

Vanessa A. Countryman
Secretary

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).

⁹ See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

¹⁰ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); *see, e.g., Behnam Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

¹¹ *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).

¹² The parties' attention is directed to the e-filing requirements in the Rules of Practice. *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 redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.