

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96402 / November 29, 2022

Admin. Proc. File No. 3-19608

In the Matter of

MICHAEL K. MARTIN

ORDER TO SHOW CAUSE

On November 25, 2019, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Michael K. Martin pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On April 22, 2021, the Division of Enforcement filed a motion for summary disposition against Martin, which requests that the Commission bar Martin from associating in the securities industry in any capacity and from participating in any penny stock offering. The motion was accompanied by the declaration of Melissa Armstrong, which establishes that service of the OIP was made on Martin on December 3, 2019, pursuant to Commission Rule of Practice 141(a)(2)(i).²

As stated in the OIP, Martin’s answer was required to be filed within 20 days of service of the OIP.³ And a response to the Division’s motion was due by May 2, 2021.⁴ As of the date of this order, Martin has not filed an answer or a response to the Division’s motion. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Martin is ORDERED to SHOW CAUSE by December 13, 2022, 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, to respond to the Division’s motion, and to otherwise defend this proceeding. Martin’s submission shall address the reasons for his failure to timely

¹ *Michael K. Martin*, Exchange Act Release No. 87616, 2019 WL 6324289 (Nov. 25, 2019).

² *See* Commission Rule of Practice 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i) (service on individuals).

³ *Martin*, 2020 WL 6324289, at *2; *see* Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), 160(b), .220(b).

⁴ *See* Rules of Practice 154(b), 160(b), 17 C.F.R. §§ 201.154(b), .160(b). The Division’s motion was served upon Martin by U.S. mail.

file an answer or response to the Division's motion, include a proposed answer to be accepted in the event that the Commission does not enter a default against him, and address the substance of the Division's request for sanctions. If Martin responds to this order to show cause, the Division may file a reply within 28 days after its service. If Martin does not file a response, the Commission will construe the Division's motion for summary disposition as a motion for the entry of an order of default and the imposition of remedial sanctions.

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.⁵ The OIP informed Martin that a failure to file an answer could result in him being deemed in default and the proceedings determined against him.⁶

The failure to timely oppose a dispositive motion is also a basis for a finding of default.⁷ Like failing to timely file an answer, failing to timely oppose a dispositive motion 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.⁸

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 e-filing requirements.⁹

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.

⁵ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁶ *Martin*, 2019 WL 6324289, at *2.

⁷ 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).

⁸ 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).

⁹ *Amendments to the Commission's Rules of Practice*, 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. And the amendments provide further requirements if a person cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices. *Id.* at 86,478-79.

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

Vanessa A. Countryman
Secretary