

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97377 / April 25, 2023

Admin. Proc. File No. 3-20817

In the Matter of
CHARLES K. TOPPING

ORDER TO SHOW CAUSE

The Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) on April 8, 2022, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), against Charles K. Topping.¹ On March 17, 2023, the Commission deemed service complete and directed Topping to file an answer to the allegations contained in the OIP by April 6, 2023.² On April 12, 2023, after Topping did not file an answer, the Division filed a motion for default and other relief.³ Topping has not responded to that order, nor has he filed any other documents with the Commission. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Topping is ORDERED to SHOW CAUSE by May 9, 2023, why the Commission should not find him in default due to his failure to file an answer to the OIP, to respond to the Division’s motion, or to otherwise defend this proceeding. Topping’s submission shall address the reasons for his failure to timely 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 (including why the Commission should not, pursuant to Exchange Act Section 15(b)(6), bar him

¹ *Charles K. Topping*, Exchange Act Release No. 94661, 2022 WL 1058706 (Apr. 8, 2022).

² *Charles K. Topping*, Exchange Act Release No. 97157, 2023 WL 2559846 (Mar. 17, 2023).

³ Topping’s opposition to the Division’s motion was due by April 24, 2023. Rule of Practice 154(b), 17 C.F.R. § 201.154(b) (providing that briefs in opposition to a motion must be filed within five days of service of the motion); Rule of Practice 160(a), 17 C.F.R. § 201.160(a) (excluding intermediate weekends in the computation of a time period of seven days or less); Rule of Practice 160(b), 17 C.F.R. § 201.160(b) (adding three days to the end of the computed time period where service was made by mail).

from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or bar him from participating in any offering of a penny stock). If Topping responds to this order to show cause, the Division may file a reply within 21 days after its service.

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 Topping that a failure to file an answer could result in deeming him in default and determining the proceeding against him.⁵ The failure to timely oppose a dispositive motion is also a basis for a finding of default.⁶ Like failing to file an answer, 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.⁷

⁴ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, 201.180.

⁵ *Topping*, 2022 WL 1058706, at *4 (Apr. 8, 2022).

⁶ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), 201.180(c); *see, e.g., Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

⁷ *See, e.g., McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sept. 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).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁸

Upon review of 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.

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

Vanessa A. Countryman
Secretary

⁸ *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.