

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6764 / November 4, 2024

Admin. Proc. File No. 3-20950

In the Matter of MICHELLE MACCIO

ORDER REQUESTING ADDITIONAL BRIEFING

On August 9, 2022, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Michelle Maccio, pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ On May 24, 2023, the Division of Enforcement filed a motion for default judgment, requesting that the Commission bar Maccio from associating in the securities industry. To date, Maccio has not made an appearance or otherwise defended this proceeding.

Advisers Act Section 203(f) authorizes the Commission to censure, suspend, or bar a person from associating in the securities industry if the Commission finds that (1) at the time of the misconduct, the person was acting as or associated with an investment adviser; (2) the person has (among other things) committed any act or been convicted of any offense enumerated in subsection (e) of Section 203;² and (3) such sanction is in the public interest. We believe that the Commission would benefit from the parties providing additional briefing regarding whether the second prong of Advisers Action Section 203(f) has been satisfied here.

Specifically, the OIP alleges that the California Department of Financial Protection and Innovation (“DFPI”) issued an order barring Maccio from holding “any position of employment, management, or control of any investment adviser” after a hearing.³ The Division’s motion for default attaches a copy of the order, but then discusses Advisers Act Section 203(e)(2), which relates to criminal convictions (rather than state regulatory actions), as the basis for seeking

¹ *Michelle Maccio*, Investment Advisers Act Release No. 6081, 2022 WL 3212337 (Aug. 9, 2022).

² 15 U.S. Code § 80b–3(f) (cross referencing 15 U.S. Code § 80b–3(e)); *see also, e.g., id.* § 80b–3(e)(2) (identifying, as a basis for Commission remedial action, convictions involving the purchase or sale of securities); *id.* § 80b–3(e)(9) (similarly identifying final orders by state regulatory authorities imposing bars).

³ *Maccio*, 2022 WL 3212337, at *1.

remedial sanctions under Section 203(f). The Division’s motion also cites to inapposite case law in support of its assertion that “[t]he Commission regularly issues bars under these circumstances.” Under the circumstances, it appears appropriate for the parties to further address which, if any, subpart of Section 203(e) provides a basis for seeking remedial sanctions against Maccio under Section 203(f), with reference to relevant legal authority.⁴

Accordingly, it is ORDERED that the Division shall submit, by December 4, 2024, a brief not to exceed 5,000 words addressing the issues raised in this order; Maccio shall file any opposition brief by January 3, 2025; and, if Maccio files an opposition brief, the Division may file a reply brief by January 21, 2025. Maccio is reminded that, if she fails to respond or otherwise defend this proceeding, the Commission may deem her in default, deem the allegations in the OIP to be true, and determine the proceeding against her upon consideration of the record without holding a public hearing.⁵

The parties’ attention is directed to the e-filing requirements in the Rules of Practice.⁶ We also remind the parties that any document filed with the Commission must also be served upon all participants in the proceeding and be accompanied by a certificate of service.⁷

⁴ 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”).

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

⁶ See Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission’s website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. Parties generally also must certify that they have redacted or omitted sensitive personal information from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e).

⁷ See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (“Papers filed with the Commission . . . shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.”).

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.

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

Vanessa A. Countryman
Secretary