

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86285 / July 2, 2019

Admin. Proc. File No. 3-18791

In the Matter of
TRAVIS A. BRANCH

ORDER REQUESTING ADDITIONAL WRITTEN SUBMISSIONS

On September 19, 2018, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Travis A. Branch pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.¹ On May 10, 2019, we issued an order directing the Division to file a status report concerning service of the OIP.² On May 28, 2019, the Division filed a status report evidencing that service of the OIP was made on Branch on September 27, 2018, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.³ As stated in the OIP, Branch’s answer was required to be filed within 20 days of service of the OIP.⁴

On May 30, 2019, we issued an order to show cause why Branch should not be deemed to be in default because Branch had not filed an answer. The order directed Branch to submit by June 13, 2019 a response explaining “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 and to otherwise defend this proceeding.” The order reminded the parties “that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format.”⁵

¹ *Travis A. Branch*, Exchange Act Release No. 84199, 2018 WL 4488873 (Sept. 19, 2018), <https://www.sec.gov/litigation/admin/2018/34-84199.pdf> (“*Branch I*”).

² *Travis A. Branch*, Exchange Act Release No. 85833, 2019 WL 2071384 (May 10, 2019), <https://www.sec.gov/litigation/opinions/2019/34-85833.pdf> (“*Branch II*”).

³ Rule of Practice 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i). In addition to the official version available at 17 C.F.R. § 201.100, et seq., the Commission’s Rules of Practice are also available online at <https://www.sec.gov/about/rulesofpractice.shtml>.

⁴ *Branch I*, 2018 WL 4488873, at *2.

⁵ *Travis A. Branch*, Exchange Act Release No. 85970, 2019 WL 2297286 (May 30, 2019), <https://www.sec.gov/litigation/opinions/2019/34-85970.pdf> (“*Branch III*”).

On June 13, 2019, Branch sent an email to the APFilings@sec.gov mailbox with the following text: “Please explain in writing what I am being accused of. Please be specific as of dates and actions.” Although subsequent filings by the Division of Enforcement indicate that Branch served this communication on the Division, Branch did not include a certificate of service with his communication. We remind the parties that Rule 151(d) of the Commission’s Rules of Practice require that a certificate of service be included with all filings.⁶

On June 26, 2019, the Division filed a reply to Branch’s email. The Division argued that Branch’s response is an inadequate answer to the OIP, does not respond to the order to show cause, and is intended solely to “delay these proceedings.” Accordingly, the Division asked for leave to file a motion for default and other relief.

We agree that Branch’s email did not satisfy his obligation to respond to the order to show cause by June 13, 2019. Specifically, Branch’s email did not address the two issues identified in the order to show cause: 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 and to otherwise defend this proceeding. Nonetheless, although the email was not an adequate response to the order to show cause, it suggests that Branch may wish to participate in this proceeding.

Under the circumstances, we believe it is premature to grant leave for the Division to file a motion for default and other relief.⁷ The Rules of Practice authorize the Commission to deem a party in default under certain circumstances, including failure to file an answer.⁸ But the Rules of Practice “do not compel entry of default”; rather, in light of the “serious” consequences of a default, it is “a prudent practice . . . [in] considering the issuance of a default order against a respondent to first order that respondent show cause why a default is not warranted.”⁹ In light of

⁶ 17 C.F.R. § 201.151(d). We direct the parties’ attention to Rules of Practice 150 through 153, 17 C.F.R. § 201.150–.153, which explain the service and filing requirements in more detail. We also remind the parties that filings emailed to APFilings@sec.gov are courtesy copies and not substitutes for compliance with the Rules of Practice governing service and filing of papers.

⁷ See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 80662, 2017 WL 1953455, at *2 (May 11, 2017) (exercising discretion to permit an applicant to show cause why the Commission should reopen a review proceeding that had been dismissed because on the same day as the dismissal was issued the applicant made a “filing suggest[ing] that it [still] wishes to pursue an appeal”); cf., e.g., *Bravado Intern. Group Merchandising Servs., Inc. v. Ninna, Inc.*, 655 F. Supp. 2d 177, 187-88 (E.D.N.Y. 2009) (denying request to enter default against *pro se* defendant who filed six-sentence document that “communicate[d] . . . intent to deny plaintiffs’ claim” even though it “[did] not admit or deny every allegation” and thus did not comply with Federal Rule of Civil Procedure 8(b) governing answers to a complaint).

⁸ 17 C.F.R. § 201.222(f).

⁹ *David Mura*, Exchange Act Release No. 72080, 2014 WL 1744129, at *3 (May 2, 2014) (order remanding case for further proceedings).

that “prudent practice,” this order again directs Branch to explain why he should not be deemed to be in default and why this proceeding should not be determined against him. A failure to make a filing in response to this order may result in Branch being held in default. We direct Branch’s attention to the order to show cause for information about the consequences of default.¹⁰ We also direct Branch’s attention to the OIP, which contains the allegations against him.¹¹ We further direct Branch’s attention to Rule of Practice 220, which governs the standards for filing motions for a more definite statement in connection with answers to an OIP.¹²

We also reset the deadlines set forth in the order to show cause. Branch’s response to this order must be filed and served consistent with the Commission’s Rules of Practice no later than July 16, 2019. If Branch files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Branch does not file a response, the Division shall file a motion for default and other relief by August 13, 2019, consistent with the directions set forth in the order to show cause about the content of such motion.

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final order resolving the matter.

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

Vanessa A. Countryman
Secretary

¹⁰ See *Branch III*, 2019 WL 2297286, at *1.

¹¹ *Branch I*, available online at <https://www.sec.gov/litigation/admin/2018/34-84199.pdf>.

¹² See Rule of Practice 220, 17 C.F.R. § 201.220 (rule governing filing of answers).