

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 6337 / June 29, 2023

Admin. Proc. File No. 3-21364

In the Matter of  
  
MARCUS BEAM

ORDER TO SHOW CAUSE

On April 11, 2023, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Marcus Beam (“Respondent”), pursuant to Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> On April 28, 2023, the Division of Enforcement filed a Proof of Service of Order Instituting Proceedings, which establishes that service of the OIP was made on Respondent on April 26, 2023, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.<sup>2</sup> On May 22, 2023, the Division filed a motion for default and imposition of sanctions against Respondent. The Division requests that the Commission find Respondent in default for not filing an answer and bar him from the securities industry based on the record and the allegations in the OIP.

As stated in the OIP, Respondent’s answer was required to be filed within 20 days of service of the OIP.<sup>3</sup> And a response to the Division’s motion was due on June 2, 2023.<sup>4</sup> As of the date of this order, Respondent has not filed an answer or a response to the Division’s motion. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Respondent is ORDERED to SHOW CAUSE by August 14, 2023, 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 oppose the Division’s motion for default, or to otherwise defend this proceeding. Respondent’s submission shall address the reasons for his failure to timely defend this proceeding, include a proposed answer to be accepted in the event

<sup>1</sup> *Marcus Beam*, Advisers Act Release No. 6279, 2023 WL 2910250 (Apr. 11, 2023).

<sup>2</sup> 17 C.F.R. § 201.141(a)(2)(i).

<sup>3</sup> *Beam*, 2023 WL 2910250, at \*2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), 201.160(b), 201.220(b).

<sup>4</sup> See Rules of Practice 154(b), 160, 17 C.F.R. §§ 201.154(b), 201.160; *BDO China Dahua CPA Co.*, Exchange Act Release No. 72753, 2014 WL 3827605, at \*1 n.2 (Aug. 4, 2014) (clarifying method of calculation of response dates for motions served by mail).

that the Commission does not enter a default against him, and address the substance of the Division's request for sanctions. Respondent shall deliver any response to the proper prison authorities no later than the due date, for forwarding to the Commission's Office of the Secretary.<sup>5</sup> If Respondent files a response to this order to show cause, the Division may file a reply within 28 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.<sup>6</sup> The OIP informed Respondent that a failure to file an answer could result in deeming him in default and determining the proceedings against him.<sup>7</sup> In addition, the failure to timely oppose a dispositive motion is itself a basis for a finding of default<sup>8</sup>; 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.<sup>9</sup>

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<sup>5</sup> See *Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that, under federal prison mailbox rule, pro se prisoners' notices of appeal are "filed" at moment of delivery to prison authorities for forwarding to the district court); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (per curiam) (noting that this "mailbox rule [applies] to other filings by *pro se* prisoners").

<sup>6</sup> Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, 201.180.

<sup>7</sup> *Beam*, 2023 WL 2910250, at \*2.

<sup>8</sup> 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).

<sup>9</sup> 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).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.<sup>10</sup> Respondent must serve the Division with a copy of any document that he files with the Commission,<sup>11</sup> and he must include a certificate of service with each document that he files.<sup>12</sup>

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

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<sup>10</sup> *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 new 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; *see also* Rules of Practice 150(c)(1), 152(a)(1), 17 C.F.R. §§ 201.150(c)(1), 201.152(a)(1) (addressing certification of inability to serve and file documents electronically).

<sup>11</sup> Rule of Practice 150(a), 17 C.F.R. § 201.150(a). The Division of Enforcement is represented by Patrick R. Costello, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-5949.

<sup>12</sup> Rule of Practice 151(d), 17 C.F.R. § 201.151(d). A certificate of service “stat[es] 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.” *Id.*