

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 86823 / August 29, 2019

INVESTMENT ADVISERS ACT OF 1940  
Release No. 5334 / August 29, 2019

Admin. Proc. File No. 3-19151

In the Matter of  
  
CHARLES MYRICK WINSTEAD

ORDER TO SHOW CAUSE

The Securities and Exchange Commission (“Commission”) issued an order instituting administrative proceedings (“OIP”) on April 22, 2019, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, against Charles Myrick Winstead.<sup>1</sup> On May 22, 2019, the Division of Enforcement filed a Declaration of Andrew O. Schiff, which states that service of the OIP was made on Winstead on May 8, 2019, consistent with Rule 141(a)(2)(i) of the Commission’s Rules of Practice.<sup>2</sup>

As stated in the OIP, Winstead’s answer was required to be filed within 20 days of service of the OIP.<sup>3</sup> As of the date of this order, Winstead has not filed an answer. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Winstead is ORDERED to SHOW CAUSE by October 14, 2019, 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. Winstead shall

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<sup>1</sup> *Charles Myrick Winstead*, Exchange Act Release No. 85704, 2019 WL 1772660 (Apr. 22, 2019).

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

<sup>3</sup> *Winstead*, 2019 WL 1772660, at \*2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), 160(b), .220(b).

deliver any response to the proper prison authorities, including any answer, no later than the due date, for forwarding to the Commission's Office of the Secretary.<sup>4</sup>

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

If Winstead files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Winstead does not file a response, the Division shall file a motion for default and other relief by October 28, 2019. The motion for default and other relief may be accompanied by additional evidence pertinent to the Commission's individualized assessment of whether the requested relief is appropriate and in the public interest.<sup>7</sup> The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.<sup>8</sup> The failure to timely oppose a dispositive motion is itself a basis for a finding of default;<sup>9</sup> it may result in the determination of particular claims, or the proceeding as a whole, adversely to the

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<sup>4</sup> See *Houston v. Lack*, 487 U.S. 266, 266 (1988) (under federal prison mailbox rule, “pro se prisoners’ notice of appeal are ‘filed’ at moment of delivery to prison authorities for forwarding to district court”); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (noting that this “mailbox rule [applies] to other filings by pro se prisoners”).

<sup>5</sup> Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

<sup>6</sup> *Winstead*, 2019 WL 1772660, at \*2.

<sup>7</sup> See generally *Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012) (requiring “meaningful explanation for imposing sanctions”); *McCarthy v. SEC*, 406 F.3d 179, 190 (D.C. Cir. 2005) (“each case must be considered on its own facts”); *Gary McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at \*1 (Apr. 23, 2015); *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at \*2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016); *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at \*3-4 (Feb. 4, 2010), *appeal after remand*, Exchange Act Release No. 63720, 2011 WL 121451, at \*5-8 (Jan. 14, 2011).

<sup>8</sup> See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

<sup>9</sup> See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. § 201.155(a)(2), .180(c); see, e.g., *Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at \*3 n.12 (Jan. 3, 2017).

non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.<sup>10</sup>

The parties are reminded that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format.

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> See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at \*3-5 (Sep. 29, 2017); *Bennett Group Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at \*2-3 (Mar. 30, 2017); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at \*1 n.6 (Apr. 13, 2006).