

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 6202 / December 9, 2022

Admin. Proc. File No. 3-20086

In the Matter of  
  
GARY EDWARD HAYNES

ORDER TO SHOW CAUSE

On September 28, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Gary Edward Haynes pursuant to Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> After being served with the OIP, Haynes did not file an answer. On October 21, 2022, the Commission granted the Division of Enforcement’s motion to amend the OIP to correct an error.<sup>2</sup> On December 5, 2022, the Division of Enforcement filed a Notice of Service, which establishes that service of the amended OIP was made on Haynes on October 31, 2022, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.<sup>3</sup>

As stated in the order granting the motion to amend the OIP, Haynes’s answer was required to be filed within 20 days of service of the amended OIP.<sup>4</sup> As of the date of this order, Haynes has not filed an answer to the amended OIP. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Haynes is ORDERED to SHOW CAUSE by January 23, 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 or to otherwise defend this proceeding. Haynes’s

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<sup>1</sup> *Gary Edward Haynes*, Advisers Act Release No. 5597, 2020 WL 5766754 (Sept. 28, 2020).

<sup>2</sup> *Gary Edward Haynes*, Advisers Act Release No. 6172, 2022 WL 13566113 (Oct. 21, 2022).

<sup>3</sup> 17 C.F.R. § 201.141(a)(2)(i).

<sup>4</sup> *Haynes*, 2022 WL 13566113, at \*1; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

submission shall address the reasons for his failure to timely file an answer and include a proposed answer to be accepted in the event that the Commission does not enter a default against him. Haynes shall deliver any response, including any answer, to the proper prison authorities no later than the due date, for forwarding to the Commission's Office of the Secretary.<sup>5</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>6</sup> The amended OIP informed Haynes that a failure to file an answer could result in his being deemed in default and the proceedings determined against him.<sup>7</sup>

If Haynes responds to this order to show cause, the Division may file a reply within 28 days after its service. If Haynes does not file a response, the Division shall file a motion for entry of an order of default and the imposition of remedial sanctions as to the amended OIP by February 21, 2023. The motion for sanctions should address each statutory element of the relevant provisions of Section 203(f) of the Advisers Act.<sup>8</sup> The motion should discuss relevant authority relating to the legal basis for, and the appropriateness of, the requested sanctions and include evidentiary support sufficient to make an individualized assessment of whether those sanctions are in the public interest.<sup>9</sup> The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.<sup>10</sup> The failure to timely oppose a dispositive motion

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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, .180.

<sup>7</sup> *Haynes*, 2022 WL 13566113, at \*4.

<sup>8</sup> See, e.g., *Shawn K. Dicken*, Exchange Act Release No. 89526, 2020 WL 4678066, at \*2 (Aug. 12, 2020) (requesting additional information from the Division "regarding the factual predicate for Dicken's convictions" and "why these facts establish" the need for remedial sanctions); see also *Shawn K. Dicken*, Exchange Act Release No. 90215, 2020 WL 6117716, at \*1 (Oct. 16, 2020) (clarifying the additional information needed from the Division).

<sup>9</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 (2d Cir. 2005) (stating that "each case must be considered on its own facts"); *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at \*1, \*3 (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>10</sup> See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

is itself a basis for a finding of default;<sup>11</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>12</sup>

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include e-filing requirements.<sup>13</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>11</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>12</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).

<sup>13</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 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.