

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97790 / June 23, 2023

Admin. Proc. File No. 3-21211

In the Matter of
RICHARD GREGORY TILFORD

ORDER TO SHOW CAUSE

On October 19, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Richard Gregory Tilford pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On November 22, 2022, the Office of the Secretary received a letter dated November 5, 2022, from Tilford, who is pro se and currently resides at a state correctional facility. In his letter, Tilford acknowledged that he received a service packet from the Commission by certified mail and requested that the Commission verify that it contained all documents sent to him. Based on his letter, which described the OIP as included among the documents in the service packet and did not assert that the OIP was incomplete, we conclude that Tilford received a copy of the OIP.² By acknowledging in his letter that he had received the service packet by certified mail, Tilford provided confirmation of

¹ *Richard Gregory Tilford*, Exchange Act Release No. 96103, 2022 WL 13564463 (Oct. 19, 2022).

² *See Richard Gregory Tilford*, Exchange Act Release No. 97024, 2023 WL 2351450, at *1 & n.1 (Mar. 2, 2023) (describing Tilford’s letter). Moreover, Rule of Practice 141(a)(1), 17 C.F.R. § 201.141(a)(1), charged the Commission’s Secretary or “another duly authorized officer” with the duty of serving a copy of the OIP on Tilford. Our finding that Tilford received a complete copy of the OIP with the service packet is thus also supported by the presumption of regularity of the official acts of public officials, pursuant to which “courts presume that they have properly discharged their official duties.” *United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926); *see also Miley v. Principi*, 366 F.3d 1343, 1347 (Fed. Cir. 2004) (“[T]he presumption of regularity may properly be invoked to establish, in the absence of contrary evidence, that” a document “was in fact mailed along with the other documents that were sent in timely fashion.”).

receipt of notice of this proceeding. Thus, we conclude that service was complete pursuant to Rule 141(a)(2)(i) of the Commission's Rules of Practice by November 5, 2022.³

We previously ordered that Tilford file his answer to the OIP by April 17, 2023.⁴ As of the date of this order, Tilford has not filed an answer. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Tilford is ORDERED to SHOW CAUSE by August 7, 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 and to otherwise defend this proceeding. Tilford's submission shall address the reason 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. Tilford 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.⁵

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.⁶ The OIP informed Tilford that a failure to file an answer could result in him being deemed in default and the proceedings determined against him.⁷

If Tilford files a response to this order to show cause, the Division may file a reply within 28 days after its service. If Tilford does not file a response, the Division shall file a motion for entry of an order of default and the imposition of remedial sanctions by September 5, 2023. The motion for sanctions should address each statutory element of the relevant provisions of Section

³ 17 C.F.R. § 201.141(a)(2)(i). Because Tilford's letter also stated that he may not have received a few pages of one of the documents sent with the OIP, our March 2, 2023 order also provided that, for the avoidance of doubt, Tilford would be sent an additional copy of the OIP and the related documents generally provided to respondents at the outset of an administrative proceeding. *Tilford*, 2023 WL 2351450, at *1.

⁴ *Tilford*, 2023 WL 2351450, at *1.

⁵ *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").

⁶ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁷ *Tilford*, 2022 WL 13564463, at *2.

15(b) of the Exchange Act.⁸ 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.⁹ The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.¹⁰ The failure to timely oppose a dispositive motion is itself a basis for a finding of default;¹¹ 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.¹²

The parties' attention is directed to the e-filing requirements in the Commission's Rules of Practice.¹³ However, as noted in our previous order, Tilford may serve and file documents by

⁸ 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).

⁹ 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).

¹⁰ See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

¹¹ 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).

¹² 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).

¹³ *Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,465-81 (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

sending them through alternative methods specified in the Commission's Rules of Practice, including through the U.S. Postal Service by first class, certified, registered, or express mail delivery.¹⁴ Tilford is again reminded that he must serve the Division with a copy of any document that he files with the Commission,¹⁵ and he must include a certificate of service with each document that he files.¹⁶

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

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.

¹⁴ *Tilford*, 2023 WL 2351450, at *1; *see also* Rules of Practice 150(d), 152(a)(2), 17 C.F.R. §§ 201.150(d), .152(a)(2) (providing additional service and filing methods).

¹⁵ Rule of Practice 150(a), 17 C.F.R. § 201.150(a). The Division of Enforcement is represented by Matthew Gulde, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, TX 76102.

¹⁶ 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.*