

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 6338 / June 29, 2023

Admin. Proc. File No. 3-20134

In the Matter of  
PAUL HORTON SMITH, SR.

ORDER GRANTING EXTENSIONS OF TIME AND ACCEPTING MOTION FOR  
DEFAULT

On October 22, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Paul Horton Smith, Sr., pursuant to Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> Smith was served with the OIP on December 6, 2022, and his answer was due 20 days thereafter.<sup>2</sup> On January 12, 2023, because Smith had not filed an answer, the Commission ordered that he show cause by January 26, 2023, why he should not be deemed to be in default, and why this proceeding should not be determined against him.<sup>3</sup>

On January 30, 2023, the Office of the Secretary received a letter from Smith via facsimile. Smith represented that he “was unaware of any failure on [his] part to respond” and that he was “advised by counsel not to testify in outside matters until the pending Federal Criminal matter has concluded.” Smith also requested that this proceeding be postponed “until such time as [he] is able to respond in detail.”<sup>4</sup> On February 28, 2023, we issued an order directing Smith to serve his filing on the Division and file with the Commission a certificate of

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<sup>1</sup> *Paul Horton Smith, Sr.*, Advisers Act Release No. 5618, 2020 WL 6262345 (Oct. 22, 2020).

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

<sup>3</sup> *Paul Horton Smith, Sr.*, Advisers Act Release No. 6215, 2023 WL 173352 (Jan. 12, 2023).

<sup>4</sup> 17 C.F.R. § 201.161.

service by March 14, 2023.<sup>5</sup> Smith did not file a certificate of service or otherwise respond to the Commission's order.

On April 17, 2023, we issued an order denying Smith's motion to stay the proceeding.<sup>6</sup> In doing so, we provided Smith "one last opportunity to respond to the allegations in the OIP and otherwise defend himself in this proceeding."<sup>7</sup> Smith was ordered to show cause by May 1, 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 the allegations in the OIP, respond to the Commission's order directing him to cure a deficient filing, or otherwise defend this proceeding.<sup>8</sup> If Smith did not file a response, the order directed the Division to file a motion for default and other relief by May 30, 2023.<sup>9</sup>

Smith has not responded to the order to show cause, and the Division did not timely file a motion for default and other relief. Instead, on June 16, 2023, the Division filed a motion for default and remedial sanctions, and contemporaneously filed a motion for leave to file the accompanying motion *instanter*. The Division represents that the delay in filing its motion was an oversight by Division counsel. We construe the Division's motion for leave as a request for an extension of time until June 16, 2023, to file its motion.<sup>10</sup>

Under the circumstances, it appears appropriate to grant the requested extension for good cause shown.<sup>11</sup> Accordingly, it is ORDERED that the Division's request for an extension of time to file its brief until June 16, 2023, is granted. The Division's motion for default and remedial sanctions shall be deemed filed as of June 16, 2023.

Given the circumstances, we also find it appropriate to extend the time for Smith to file an opposition brief. It is therefore ORDERED that Smith's opposition brief is due by July 13, 2023, and the Division's reply is due by July 20, 2023. Smith's opposition brief must address the reasons for his failure to timely file an answer, respond to the Commission's order to cure a deficient filing and two orders to show cause, and also address the substance of the Division's motion for default and sanctions. As explained in our prior show cause orders in this proceeding, the failure to timely oppose a dispositive motion is itself a basis for a finding of

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<sup>5</sup> *Paul Horton Smith, Sr.*, Advisers Act Release No. 6252, 2023 WL 2299556 (Feb. 28, 2023); *see also* Rule of Practice 151(d), 17 C.F.R. § 201.151(d).

<sup>6</sup> *Paul Horton Smith, Sr.*, Advisers Act Release No. 6287, 2023 WL 2986240 (Apr. 17, 2023).

<sup>7</sup> *Id.* at \*2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See* Rule of Practice 161, 17 C.F.R. § 201.161 (providing for extensions of time).

<sup>11</sup> *See* Rule of Practice 161, 17 C.F.R. § 201.161; *see also In re Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020) (stating that "pending further order of the Commission, all reasonable requests for extensions of time will not be disfavored as stated in Rule 161" (citing 17 C.F.R. § 201.161(b)(1))).

default; 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 e-filing requirements in the Rules of Practice.<sup>13</sup> We also remind the parties that any document filed with the Commission must be served upon all participants in the proceeding and be accompanied by a certificate of service.<sup>14</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>12</sup> See *Smith*, 2023 WL 173352, at \*1; *Smith*, 2023 WL 2986240, at \*2.

<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.

<sup>14</sup> See *supra* note 13; see also Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (“Papers filed with the Commission . . . shall be accompanied by a certificate stating 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.”).