

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 6490 / November 22, 2023

Admin. Proc. File No. 3-21364

In the Matter of  
  
MARCUS BEAM

ORDER DIRECTING FILING OF REPLY BRIEF AND REMINDING RESPONDENT OF  
FILING AND SERVICE OBLIGATIONS

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 proof of service showing that Respondent was served with the OIP on April 26, 2023.<sup>2</sup> Respondent did not file an answer to the OIP, and the Division subsequently filed a motion for default and imposition of sanctions against him. Respondent did not file a response to that motion, and the Commission subsequently ordered Respondent to show cause why this proceeding should not be determined against him.<sup>3</sup>

On September 28, 2023,<sup>4</sup> Respondent filed a motion requesting that the Commission “[v]acate any orders of default or Rule to Show Cause” and continue these proceedings until after the sentencing in his criminal case, which he states is currently set for December 21, 2023. As grounds for his motion, Respondent identifies certain concerns regarding his incarcerated status and the pending criminal proceeding against him. Although the Commission has issued an order to show cause against Respondent, it has not entered a default against him or issued an opinion in this proceeding. Accordingly, we construe Respondent’s motion as a request to

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

<sup>2</sup> Rule of Practice 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i).

<sup>3</sup> *Marcus Beam*, Advisers Act Release No. 6337, 2023 WL 4267447 (June 29, 2023); *Marcus Beam*, Advisers Act Release No. 6386, 2023 WL 5506856, at \*1 (Aug. 24, 2023) (renewed order to show cause noting that the prior order “may not have been properly served”).

<sup>4</sup> Respondent’s certificate of service states that he deposited the motion for mailing on September 28, 2023. Because he is proceeding *pro se* and is incarcerated, documents that Respondent sends to the Office of the Secretary for filing in this proceeding are considered “filed” when delivered to prison authorities. See *Beam*, 2023 WL 5506856, at \*1 n.3.

vacate the order to show cause or to extend the periods during which he may respond to it, and to file an answer, until after his criminal sentencing.<sup>5</sup>

The Division filed an opposition, in which it argues that Respondent did not comply with the orders to show cause because he failed to (i) explain why he did not timely defend the proceeding, (ii) submit a proposed answer to the OIP, and (iii) address the substance of its request that he be barred from the securities industry. The Division also argues that Respondent's sentencing in the criminal action is irrelevant because he already pleaded guilty to an offense and admitted to facts in his plea agreement that support an associational bar.

In light of all the circumstances, including Respondent's *pro se* incarcerated status, it appears appropriate to set a deadline for Respondent to file a reply in support of his motion. It is hereby ORDERED that Respondent shall file any reply to the Division's opposition brief by December 20, 2023.

The Commission previously advised Respondent that he must serve the Division of Enforcement with a copy of any document that he files with the Commission,<sup>6</sup> and he must include a certificate of service with each document that he files.<sup>7</sup> "Filing of papers with the Commission shall be made by filing them with the Secretary."<sup>8</sup> Failure to do so provides grounds for the Commission to reject, in whole or in part, any such filing.<sup>9</sup>

If due to his incarceration, Respondent is unable to file any reply through the Commission's electronic filing system and serve it electronically on counsel for the Division by email, Respondent shall certify in his reply that he is unable to do so.<sup>10</sup> Such certification shall authorize Respondent to file and serve his filing by mailing it to the Office of the Secretary and the Division of Enforcement at the addresses identified above.<sup>11</sup>

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<sup>5</sup> See generally Rule of Practice 161, 17 C.F.R. § 201.161 (addressing extensions of time, postponements, and adjournments).

<sup>6</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>7</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.*

<sup>8</sup> Rule of Practice 151(b), 17 C.F.R. § 201.151(b). The address of the Office of the Secretary is 100 F Street NE, Washington, DC 20549.

<sup>9</sup> Rule of Practice 180(b), 17 C.F.R. § 201.180(b). A copy of the Rules of Practice is enclosed with this order.

<sup>10</sup> Rules of Practice 150(c)(1), 152(a)(1), 17 C.F.R. §§ 201.150(c)(1), .152(a)(1).

<sup>11</sup> Rules of Practice 150(d)(2), 152(a)(2), 17 C.F.R. §§ 201.150(d)(2), 152(a)(2).

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman  
Secretary