

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 101835 / December 6, 2024

Admin. Proc. File No. 3-21951

In the Matter of  
TODD STUART BREITLING

ORDER TO SHOW CAUSE

The Securities and Exchange Commission issued an order instituting proceedings (“OIP”) on May 29, 2024, under Section 15(b) of the Securities Exchange Act of 1934, against Todd Stuart Breitling, who is currently incarcerated.<sup>1</sup> On September 30, 2024, the Division of Enforcement filed a Notice of Service, which establishes that service of the OIP was made on Breitling on September 25, 2024, pursuant to Commission Rule of Practice 141(a)(2)(i).<sup>2</sup>

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

Accordingly, Breitling is ORDERED to SHOW CAUSE by January 21, 2025, 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 otherwise to defend this proceeding. Breitling’s 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. Breitling 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>4</sup>

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<sup>1</sup> *Todd Stuart Breitling*, Exchange Act Release No. 100238, 2024 WL 2800987 (May 29, 2024).

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

<sup>3</sup> *Breitling*, 2024 WL 2800987, at \*2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), 160(b), .220(b).

<sup>4</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

When a party defaults, the allegations in the OIP may 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 Breitling that a failure to file an answer could result in deeming him in default and determining the proceedings against him.<sup>6</sup>

If Breitling files a response to this order to show cause, the Division may file a reply within 28 days after its service. If Breitling 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 February 18, 2025. The motion for sanctions should address each statutory element of the relevant provisions of Exchange Act Section 15(b).<sup>7</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>8</sup> The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.<sup>9</sup> The failure to timely oppose a dispositive motion is itself a basis for a finding of default;<sup>10</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>11</sup>

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

<sup>6</sup> *Breitling*, 2024 WL 2800987, at \*2.

<sup>7</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>8</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>9</sup> *See* Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

<sup>10</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>11</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

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.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.<sup>12</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>13</sup> The Rules of Practice further provide alternative filing requirements if a person files a certification explaining why they cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices.<sup>14</sup>

If Breitling certifies that he is unable to comply with the electronic filing requirements, the address to which he should mail all paper filings is Office of the Secretary, U.S. Securities and Exchange Commission; 100 F Street NE, Mail Stop 1090; Washington, DC 20549. He

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S. Ct. 2044 (2018); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at \*1 n.6 (Apr. 13, 2006).

<sup>12</sup> See Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission's website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. Parties generally also must certify that they have redacted or omitted sensitive personal information from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e).

<sup>13</sup> See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with filings); 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 the service, the method of service, and the mailing address or email address to which service was made, if not made in person.").

Breitling should serve any filings on the Division of Enforcement attorney in this matter, Jennifer Reece; Burnett Plaza; 801 Cherry Street; Suite 1900, Unit 18; Fort Worth, TX 76102; [ReeceJ@sec.gov](mailto:ReeceJ@sec.gov). We also note that the certificate of service attached to the Division's Notice of Service omits Breitling's inmate register number and appears to list the physical address rather than the mailing address for his correctional institution. The Division should correct these issues when serving further documents on Breitling.

<sup>14</sup> Rule of Practice 152(a), 17 C.F.R. § 201.152(a).

should also mail a copy of each filing to the Division of Enforcement attorney in this matter, whose contact information is listed in footnote 13.

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

Vanessa A. Countryman  
Secretary