

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 99885 / April 2, 2024

Admin. Proc. File No. 3-21726

<p>In the Matter of</p> <p>BRIAN BARTLETT AMOAH and ELBERT “AL” ELLIOTT</p>
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ORDER TO SHOW CAUSE

On September 26, 2023, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Brian Bartlett Amoah and Elbert “Al” Elliott (“Respondents”) pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> On January 3, 2024, the Division of Enforcement filed a process server’s Return of Service, establishing that service of the OIP was made on Amoah on December 9, 2023, pursuant to Commission Rule of Practice 141(a)(2)(i).<sup>2</sup> The Division has not filed any documents establishing that service of the OIP has been made on Elliott.<sup>3</sup>

As stated in the OIP, Amoah’s answer was required to be filed within 20 days of service of the OIP.<sup>4</sup> As of the date of this order, Amoah has not filed an answer. Under the circumstances, it appears appropriate to require Amoah, but not Elliott, to show cause why he should not now be found in default. The prehearing conference and the hearing are thus continued indefinitely as to only Amoah.

Accordingly, Amoah is ORDERED to SHOW CAUSE by April 16, 2024, why he should not be deemed to be in default and why this proceeding should not be determined against him

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<sup>1</sup> *Brian Bartlett Amoah*, Exchange Act Release No. 98526, 2023 WL 6290961 (Sept. 26, 2023).

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

<sup>3</sup> In accordance with an earlier order, the Division is directed to continue to file status reports every 42 days regarding its efforts to effect service on Elliott. *See Brian Bartlett Amoah*, Exchange Act Release No. 99015 (Nov. 22, 2023), <https://www.sec.gov/files/litigation/opinions/2023/34-99015.pdf>.

<sup>4</sup> *Amoah*, 2023 WL 6290961, at \*5; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

due to his failure to file an answer and to otherwise defend this proceeding. Amoah'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.

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>5</sup> The OIP informed Amoah that a failure to file an answer could result in his being deemed in default and the proceeding being determined against him.<sup>6</sup>

If Amoah files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Amoah does not file a response, the Division shall file a motion for entry of an order of default and the imposition of remedial sanctions on Amoah by May 14, 2024. 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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<sup>5</sup> Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

<sup>6</sup> *Amoah*, 2023 WL 6290961, at \*5.

<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 Cap. 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

The parties' attention is directed to the e-filing requirements in the Commission's 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>

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 as to Amoah.

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

Vanessa A. Countryman  
Secretary

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WL 1176053, at \*2-3 (Mar. 30, 2017), *abrogated in part on other grounds by Lucia v. SEC*, 585 U.S. 237 (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 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 their 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 service, the method of service, and the mailing address or email address to which service was made, if not made in person."). The Division of Enforcement is represented by Robert M. Moye, Peter Senechalle, and Devlin N. Su, Securities and Exchange Commission, Chicago Regional Office; 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604; [moyer@sec.gov](mailto:moyer@sec.gov), [senechallep@sec.gov](mailto:senechallep@sec.gov), and [sude@sec.gov](mailto:sude@sec.gov).