

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6564 / February 29, 2024

Admin. Proc. File No. 3-21364

In the Matter of MARCUS BEAM

ORDER SCHEDULING BRIEFS

On April 11, 2023, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Marcus Beam (“Respondent”) pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ After Respondent filed an answer to the OIP, the Division of Enforcement filed a motion for summary disposition pursuant to Commission Rule of Practice 250(b).² The parties subsequently held a prehearing conference and submitted a joint statement regarding it, in which they proposed a briefing schedule for the Division’s motion.

In light of the parties’ agreement, we believe it is appropriate to set the following briefing schedule for the Division’s motion for summary disposition. Accordingly, IT IS ORDERED that Respondent’s opposition brief shall be filed by April 19, 2024;³ and the Division’s reply brief shall be filed by ten days after it receives Beam’s brief.⁴

¹ *Marcus Beam*, Advisers Act Release No. 21364, 2023 WL 2910250 (Apr. 11, 2023).

² *See* 17 C.F.R. § 201.250(b).

³ 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 Marcus Beam*, Advisers Act Release No. 6386, 2023 WL 5506856, at *1 n.3 (Aug. 24, 2023).

⁴ Attention is called to Rules of Practice 150–153, 17 C.F.R. §§ 201.150–153, with respect to form and service, Rule of Practice 250(e) and (f), 17 C.F.R. § 201.250(e) and (f), with respect to length limitations, and Rule of Practice 160, 17 C.F.R. § 201.160, with respect to the computation of periods of time under the Rules of Practice. *See also Pending Admin. 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))).

An opposition to a motion for summary disposition should precisely specify the basis for that opposition, identify with particularity the material factual issues in dispute, and address relevant legal precedent from a court or the Commission.⁵ The opposition cannot rely on bare allegations or denials; it must instead point to evidence that shows there is a genuine and material factual dispute that can be resolved only by conducting an in-person hearing.⁶

A party's failure to file a brief or comply with this order may result in the entry of default, the dismissal of one or more claims, the determination of a particular claim or claims at issue against that party, or the prohibition of the introduction of evidence or the exclusion of testimony concerning an issue.⁷ 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.⁸

Respondent is reminded that he must send any papers he files with the Commission to the Office of the Secretary, and not the Office of the General Counsel.⁹ We also remind the parties

⁵ See, e.g., *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 & n.68 (Dec. 12, 2013) (discussing appropriateness of summary disposition in follow-on proceedings and providing citations), *petition denied*, 773 F.3d 89 (D.C. Cir. 2014); *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4–6 (Sept. 26, 2007) (discussing unsuccessful attempt to oppose summary disposition), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

⁶ *Healthway Shopping Network*, Exchange Act Release No. 89374, 2020 WL 4207666, at *2 (July 22, 2020); *James S. Tagliaferri*, Exchange Act Release No. 75820, 2015 WL 5139389, at *2 n.14 (Sept. 2, 2015) (explaining that the party opposing summary disposition cannot merely provide a list of factual issues that are asserted to be material or provide a list of potential witnesses without any “explanation of their expected testimony”).

⁷ Rule of Practice 180(c), 17 C.F.R. § 201.180(c).

⁸ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁹ See Rule of Practice 151(b) (“Filing of papers with the Commission shall be made by filing them with the Secretary.”).

that any document filed with the Commission must be served upon all participants in the proceeding and be accompanied by a certificate of service.¹⁰

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

Vanessa A. Countryman
Secretary

¹⁰ 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) (certificate of service must state “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”).