

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5608 / October 6, 2020

Admin. Proc. File No. 3-19685

In the Matter of

BARTON W. STUCK,

Respondent.

ORDER DENYING MOTION FOR EXTENSION OF TIME

On January 31, 2020, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Barton W. Stuck (“Respondent”) pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ The OIP alleged that, in 2018, Respondent pleaded guilty in federal district court to one count of wire fraud, one count of money laundering in connection with a scheme to defraud and obtain money from at least one investor, and two counts of making false statements in forms filed with the Commission. According to the OIP, Respondent is free on bond and awaiting sentencing. The OIP also alleged that, in the same year, the Banking Commissioner for the State of Connecticut Department of Banking issued a final order finding that Respondent violated the securities laws by making false and misleading statements in connection with the sale of certain securities, by acting as an unregistered investment adviser, and by making false and misleading statements in connection with certain state filings (the “Connecticut Order”).

Respondent was served with the OIP on March 24, 2020. Respondent subsequently sought, and was granted, four extensions of time in which to file his answer to the OIP.² Respondent based his extension requests in part on his claim that the sentencing hearing in his federal criminal case had been postponed in anticipation of his receiving funds that might allow

¹ *Barton W. Stuck*, Investment Advisers Act Release No. 5439, 2020 WL 508866, at *1 (Jan. 31, 2020).

² *See Barton W. Stuck*, Investment Advisers Act Release No. 5472, 2020 WL 1659873 (Apr. 2, 2020) (extending time to answer until May 13, 2020); *Barton W. Stuck*, Investment Advisers Act Release No. 5507, 2020 WL 2613173 (May 21, 2020) (extending time to answer until July 20, 2020); *Barton W. Stuck*, Investment Advisers Act Release No. 5544, 2020 WL 4038964 (July 17, 2020) (extending time to answer until July 27, 2020); *Barton W. Stuck*, Investment Advisers Act Release No. 5553, 2020 WL 4339273 (July 28, 2020) (extending time to answer until September 28, 2020).

him to retain counsel. He argued that the Commission should grant him a similar extension for the same reason. Respondent now requests a fifth extension of the time to file his answer. Respondent asserts that the sentencing hearing has again been rescheduled, until November 3, 2020, in continued anticipation that he may receive funds to retain legal counsel. And he again requests that the Commission grant him a similar extension of time in which to file his answer. The Division of Enforcement opposes the request.

We find that Respondent has not established the necessary “good cause” to grant him a further extension of time in which to answer the OIP.³ Respondent argues that “time is not of the essence” given the extensions he has already received, and that allowing him additional time to file his answer “will permit all uncertainty to be removed from this matter in Federal court.” Respondent states that he is represented by a public defender in his criminal proceeding, but that “if funds do indeed arrive” he would then obtain “independent legal counsel,” after which he would consider withdrawing his guilty plea and seeking a jury trial. But as we noted when granting Respondent’s previous extension requests, the timing of Respondent’s criminal sentencing does not alter his obligation to timely answer the OIP in this case.⁴ And the Division represents that the Connecticut Order, rather than the federal criminal action, “provides the basis for this matter proceeding forward.” The Division argues that, “[a]s a result, whether or not [Respondent] ever replaces his counsel and/or withdraws his guilty plea in that action, has no impact on the present administrative proceeding.” Respondent also suggests that he has certain health conditions, but does not explain how this prevents him from answering the OIP.

Given these considerations, we find that Respondent has provided no basis for an extension that would “override the strong public interest in the prompt enforcement of the federal securities laws.”⁵ The previous extensions should have provided Respondent ample time to prepare and file an answer with the Commission. And in granting Respondent’s last request for an extension, we warned that “any future requests for an extension will be disfavored.”⁶

Nonetheless, because the time to file an answer has passed, we will provide Respondent an additional 14 days to file an answer to the OIP. Any further requests for an extension of time

³ 17 C.F.R. § 201.161(a).

⁴ See *Stuck*, 2020 WL 4038964, at *1 & n.6 (citing *Delegation of Authority to the Secretary of the Comm’n*, Exchange Act Rel. No. 45848, 67 Fed. Reg. 30326, 30326 n.5 (May 6, 2002) (indicating that, in follow-on proceedings under the Advisers Act, “a criminal conviction ‘includes a verdict, judgment, or plea of guilty . . . whether or not sentence has been imposed’” (quoting 15 U.S.C. § 80b-2(a)(6))); see also *Stuck*, 2020 WL 4339273, at *1. To the extent Respondent is contemplating filing a post-conviction motion to set aside his guilty plea, such a motion would not be “a basis to postpone an administrative proceeding.” *Allan Michael Roth*, Exchange Act Release No. 85327, 2019 WL 1225730, at *2 (Mar. 14, 2019).

⁵ *Lynn Tilton*, Investment Advisers Act Release No. 4735, 2017 WL 3214456, at 2 (July 28, 2017).

⁶ *Stuck*, 2020 WL 4339273, *1.

to do so will not be entertained. If Respondent does not file an answer by October 20, 2020, he may be deemed to be in default and the proceeding may be determined against him.⁷

Therefore, it is ORDERED that the time for filing an answer to the OIP is extended to October 20, 2020.

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

Vanessa A. Countryman
Secretary

⁷ See Rules of Practice 155, 180; 17 C.F.R. § 201.155, .180.