

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99999 / April 22, 2024

Admin. Proc. File No. 3-21822

In the Matter of
JEFFREY ALAN HORN

ORDER TO SHOW CAUSE

On December 29, 2023, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Jeffrey Alan Horn pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On February 22, 2024, the Division of Enforcement filed a Notice of Proof of Service, which establishes that service of the OIP was made on Horn on February 8, 2024, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.²

On March 21, 2024, the Division provided notice that it had received a response from Horn, which it included with its filing. Horn’s response stated that he “contests [] all allegations” in the proceeding and that he should be contacted through his counsel.³ Horn did

¹ *Jeffrey Alan Horn*, Exchange Act Release No. 99254 (Dec. 29, 2023), available at <https://www.sec.gov/files/litigation/admin/2023/34-99254.pdf>.

² 17 C.F.R. § 201.141(a)(2)(i).

³ The Division also included two items of correspondence with its filing: (1) an email exchange with the attorney that Horn identified, who stated that he represents Horn only in a pending criminal case and not in this proceeding; and (2) a letter that the Division sent to Horn forwarding him its email correspondence with the attorney.

not file this response with the Commission,⁴ and he has not otherwise appeared or filed any documents in this proceeding.

As stated in the OIP, Horn was required to file an answer with the Commission within 20 days of service of the OIP.⁵ As of the date of this order, Horn has not filed any documents in this proceeding. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Horn is ORDERED to SHOW CAUSE by June 6, 2024, 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 any documents in this proceeding or to otherwise defend this proceeding. Horn's submission shall address the reasons for his failure to defend the proceeding, and include a proposed answer to be accepted in the event that the Commission does not enter a default against him. Horn 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.⁶

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.⁷ The OIP informed Horn that a failure to file an answer or appear at a hearing or conference could result in deeming him in default and determining the proceedings against him.⁸

If Horn files a response to this order to show cause, the Division may file a reply within 28 days after its service. If Horn 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 July 5, 2024. The motion for sanctions should address each statutory element of the relevant provisions of Section

⁴ According to the response's certificate of service, Horn mailed the response to the Commission and counsel for the Division at the address of the Commission's Miami regional office. To file the response in this proceeding, however, Horn needed to send it to the Commission's Office of the Secretary, either electronically or else by mail addressed to the Secretary at 100 F Street, NE, Washington, D.C. 20549. See Rule of Practice 151(b), 17 C.F.R. § 201.151(b).

⁵ *Horn*, Exchange Act Release No. 99254, at 2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

⁶ 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 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").

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

⁸ *Horn*, Exchange Act Release No. 99254, at 3.

15(b) of the Exchange Act.⁹ 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.¹⁰ The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.¹¹ The failure to timely oppose a dispositive motion is itself a basis for a finding of default;¹² 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.¹³

⁹ 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).

¹⁰ 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).

¹¹ See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

¹² 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).

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

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹⁴ 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.¹⁵

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.

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

Vanessa A. Countryman
Secretary

¹⁴ 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).

¹⁵ 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.”).