

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101311 / October 11, 2024

Admin. Proc. File No. 3-21948

In the Matter of

MARK ALLAN PLUMMER

ORDER TO SHOW CAUSE

On May 22, 2024, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Mark Allan Plummer pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On August 30, 2024, the Division of Enforcement filed a notice of service establishing that service of the OIP was made on Plummer on August 19, 2024, pursuant to Commission Rule of Practice 141(a)(2)(i).²

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

¹ *Mark Allen Plummer*, Exchange Act Release No. 100207, 2024 WL 2322472 (May 22, 2024).

² 17 C.F.R. § 201.141(a)(2)(i). A process server effected personal service on another individual residing at Plummer’s home address, and Plummer has since indicated, in an email to Division counsel, that he intends to “respond *pro se*” in this proceeding, which he has not yet done. We note that certain filings in this matter, including the OIP, appear to contain a minor misspelling, in that they have listed respondent’s middle name as both “Allen” and “Allan.” Given the discrepancy, the parties should confirm the correct spelling of the respondent’s name and seek any relief they may deem appropriate, such as moving to amend the OIP. *See, e.g., All. Well Serv. LLC v. Torres*, No. 3:17-CV-00196-M, 2017 WL 7512937, at *2 n. 1 (N.D. Tex. Aug. 21, 2017) (“minor misspelling of Defendant's name, naming him “Mikael Torres” rather than his correct name Mikeal Torres . . . [did] not affect the validity of service.”) (citing *Grannis v. Ordean*, 234 U.S. 385, 395 (1914) (holding that service was not defective due to a minor misspelling of the defendant's name where the defendant failed to appear and plead the misnomer)).

³ *Plummer*, 2024 WL 2322472, at *2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), 160(b), .220(b).

Accordingly, Plummer is ORDERED to SHOW CAUSE by October 25, 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 an answer or otherwise to defend this proceeding. Plummer'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 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.⁴ The OIP informed Plummer that a failure to file an answer could result in his being deemed in default and the proceeding determined against him.⁵

If Plummer files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Plummer 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 November 22, 2024. The motion for sanctions should address each statutory element of the relevant provisions of Section 15(b) of the Exchange Act.⁶ 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.⁷ The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.⁸ The failure to timely oppose a dispositive motion is itself a basis for a finding of default;⁹ it may result in the determination of particular claims, or

⁴ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁵ *Plummer*, 2024 WL 2322472, at *2.

⁶ *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).

⁷ *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).

⁸ *See* Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

⁹ *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).

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.¹⁰

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹¹ 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.¹²

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

¹⁰ 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).

¹¹ 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).

¹² 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.").