

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 94725 / April 14, 2022

Admin. Proc. File No. 3-20531

In the Matter of  
  
HORTER INVESTMENT MANAGEMENT, LLC AND  
DREW K. HORTER

ORDER

The Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) on September 8, 2021, pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, against Horter Investment Management, LLC and Drew K. Horter.<sup>1</sup> The OIP ordered that a public hearing be held before the Commission for the purpose of taking evidence. Since the issuance of the OIP, the parties have been engaging in discovery in anticipation of a hearing commencing on July 18, 2022.

On February 18, 2022, in response to Respondents’ subpoena request, the Commission issued an order pursuant to delegated authority that suspended the fact discovery deadline contained in the current case scheduling order.<sup>2</sup> On March 4, 2022, the parties jointly proposed to suspend the expert report deadlines in the scheduling order and jointly stipulated that they will file a proposed amended case schedule upon resolution of Respondents’ most recent subpoena request.<sup>3</sup> The Commission finds that at this time it would serve the interests of justice and not result in prejudice to any party to specify further procedures in this matter.<sup>4</sup>

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<sup>1</sup> *Horter Inv. Mgmt., LLC*, Advisers Act Release No. 5853, 2021 WL 4100538 (Sept. 8, 2021).

<sup>2</sup> *See Horter Inv. Mgmt., LLC*, Advisers Act Release No. 5969, 2022 WL 504544 (Feb. 18, 2022) (modifying fact discovery deadline); *Horter Inv. Mgmt., LLC*, Advisers Act Release No. 5897, 2021 WL 4975017 (Oct. 26, 2021) (setting prehearing deadlines).

<sup>3</sup> The Commission issued the requested subpoena on March 17, 2022.

<sup>4</sup> *See* Rule of Practice 100(c), 17 C.F.R. § 201.100(c). To the extent conflicting, the procedures in this order supersede those specified in the OIP.

Accordingly, IT IS ORDERED that a public hearing for purposes of taking evidence on the questions set forth in Section III of the OIP shall be convened before an Administrative Law Judge as provided by Rule of Practice 110.<sup>5</sup> The Chief Administrative Law Judge shall designate, by rotation to the extent practicable, an Administrative Law Judge to be the presiding hearing officer.<sup>6</sup> The presiding hearing officer shall specify the time and place of the hearing by further order. The presiding hearing officer shall exercise the full powers conferred by the Commission's Rules of Practice and the Administrative Procedure Act.<sup>7</sup>

All motions, objections, or applications shall be directed to and decided by the presiding hearing officer.<sup>8</sup> This includes, without limitation, filings under Rules of Practice 210, 221, 222, 230, 231, 232, 233, and 250.<sup>9</sup> The parties should comply with the hearing officer's instructions regarding the provision of electronic courtesy copies. Any motion or other prehearing request currently pending before the Commission is referred to the hearing officer for disposition.

IT IS FURTHER ORDERED that all existing procedural schedules issued by the Commission in this matter are hereby vacated.<sup>10</sup> Any proposals for new or modified procedural schedules shall be directed to and decided by the presiding hearing officer.

IT IS FURTHER ORDERED that, pursuant to Rule of Practice 360(a)(2), the hearing officer shall issue an initial decision no later than 120 days from the occurrence of one of the following events: (A) the completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) where the hearing officer has determined that no public hearing is necessary, upon completion of briefing on a motion pursuant to Rule of Practice 250<sup>11</sup>; or (C) the determination by the hearing officer that a party is deemed to be in default under Rule of

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<sup>5</sup> 17 C.F.R. § 201.110. The hearing officer shall have authority to give effect to an agreement by all respondents to a different hearing date, but absent such agreement the public hearing must commence by July 18, 2022.

<sup>6</sup> 17 C.F.R. § 200.30-10(a)(2).

<sup>7</sup> *See, e.g.*, 5 U.S.C. § 556; Rule of Practice 111, 17 C.F.R. § 201.111.

<sup>8</sup> *See* 17 C.F.R. § 201.151(b)-(c) (explaining how to file and how to direct filings when matter assigned to hearing officer).

<sup>9</sup> 17 C.F.R. §§ 201.210, .221, .222, .230, .231, .232, .233, .250.

<sup>10</sup> *See Horter Inv. Mgmt., LLC*, 2022 WL 504544; *Horter Inv. Mgmt., LLC*, 2021 WL 4975017.

<sup>11</sup> 17 C.F.R. § 201.250.

Practice 155 and no public hearing is necessary.<sup>12</sup> This proceeding shall be deemed to be one under the 120-day timeframe specified in Rule of Practice 360(a)(2)(i) for the purposes of applying Rules of Practice 233 and 250.<sup>13</sup>

IT IS FURTHER ORDERED that the initial decision be issued on the basis of the record before the hearing officer, as defined by Rule of Practice 350,<sup>14</sup> and that the record index shall be prepared and certified in accordance with Rule of Practice 351.<sup>15</sup>

IT IS FURTHER ORDERED that, upon issuance of an initial decision, Rules of Practice 360(d), 410, and 411 shall govern further Commission consideration of this matter.<sup>16</sup>

This order does not preclude the Commission from assigning the matter to the Commission itself or to any member of the Commission at any time.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>12</sup> 17 C.F.R. § 201.155.

<sup>13</sup> 17 C.F.R. §§ 201.233, .250, .360(a)(2)(i).

<sup>14</sup> 17 C.F.R. § 201.350.

<sup>15</sup> 17 C.F.R. § 201.351.

<sup>16</sup> 17 C.F.R. §§ 201.360(d), .410, .411. Prior to issuance of an initial decision, interlocutory Commission review shall be governed by Rule of Practice 400. 17 C.F.R. § 201.400.