

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5953 / January 31, 2022

Admin. Proc. File No. 3-20531

In the Matter of

HORTER INVESTMENT MANAGEMENT, LLC
AND DREW K. HORTER

ORDER

On September 8, 2021, the Securities and Exchange Commission issued an order instituting an administrative proceeding against Horter Investment Management, LLC and Drew K. Horter (collectively, “Respondents”) pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940.¹ On January 26, 2022, the Division of Enforcement filed a request pursuant to Rule of Practice 232 for the issuance of a subpoena for the deposition of an employee of Respondents.² The Division’s request represented that Respondents had identified this employee as a hearing fact witness and that Respondents had agreed to make the employee available to the Division for a deposition by videoconference on February 9, 2022. The Division requested that a subpoena for the employee’s deposition be issued.

Rule 233 of the Commission’s Rules of Practice provides that a deposition may be taken in proceedings under the 120-day timeframe, as is this matter, “upon written notice.”³ The rule also states that attendance at such a deposition “*may* be ordered by subpoena issued pursuant to” Rule 232.⁴ Thus, the Rules of Practice provide for a procedure to compel attendance at a

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

² *See* 17 C.F.R. § 201.232.

³ 17 C.F.R. § 201.233(a); *see Horter Inv. Mgmt.*, 2021 WL 4100538, at *13 (“This proceeding shall be deemed to be one under the 120-day timeframe . . .”).

⁴ 17 C.F.R. § 201.233(a)(4) (emphasis added).

deposition, but do not require that a subpoena be issued for every deposition.⁵ Where, as appears to be the case here, the witness has been made available and there is no dispute over taking the witness's deposition, written notice without a request "for issuance of a subpoena made to the Commission, or any member thereof" is sufficient.⁶

Because there appears to be no dispute that this witness's deposition will take place on February 9, 2022, the Division of Enforcement's request for issuance of a subpoena is DENIED. If the Division believes it needs to secure a subpoena prior to taking the deposition of this witness, the Division is ORDERED to file a notice that explains its reasoning by February 4, 2022.

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

Vanessa A. Countryman
Secretary

⁵ See also Fed. R. Civ. P. 30 (like the Commission's Rules of Practice providing that certain depositions may occur by right after "written notice," but that attendance may be compelled by subpoena when necessary).

⁶ 17 C.F.R. § 201.232(a)(1). We remind the parties that this matter is currently set before the Commission; there is no assigned hearing officer. See *Horter Inv. Mgmt.*, 2021 WL 4100538, at *11 (ordering "a public hearing before the Commission").