

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5969 / February 18, 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 The OIP ordered that a public hearing be held before the Commission for the purpose of taking evidence. On October 26, 2021, the Commission issued an order that provided that fact discovery would close on February 28, 2022.²

On February 9, 2022, Respondents requested, pursuant to Rule of Practice 232, the issuance of a subpoena for the deposition of a former employee of Respondents who was listed as a fact witness in the Division of Enforcement’s witness disclosures.³ Respondents’ request represented that the witness’s counsel of record was unable to contact the witness regarding scheduling a deposition. The request also represented that Respondents and the Division are available to conduct the deposition on the morning of February 28, 2022. Respondents requested that a subpoena for the witness’s deposition be issued for February 28, 2022.

In this proceeding, as in other proceedings that have been set for a hearing before the Commission,⁴ the Commission has delegated to the Office of the General Counsel authority “[t]o

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

² *Horter Inv. Mgmt., LLC*, Advisers Act Release No. 5897, 2021 WL 4975017 (Oct. 26, 2021).

³ See 17 C.F.R. § 201.232.

⁴ See *Horter Inv. Mgmt., LLC*, 2021 WL 4100538, at *11.

determine procedural requests or similar prehearing matters” and “[t]o rule upon non-dispositive, prehearing motions.”⁵ But the Commission has not delegated authority to the Office of the General Counsel to issue subpoenas.⁶ Thus, it is the Commission that must consider and act on any requests to issue a subpoena, including the February 9, 2022 request.

Given these circumstances, we direct Respondents to modify their subpoena request to account for the time needed for the Commission to consider their subpoena request. Respondents should request that the subpoena be issued for a date and time that will afford the Commission sufficient time to consider their request and for the deposition to be arranged should the Commission issue the requested subpoena. We will suspend the current deadline for the completion of fact discovery to account for the need for Respondents to resubmit their subpoena request.

Accordingly, IT IS ORDERED that the deadline for fact discovery set forth in the October 26, 2021 scheduling order be suspended until further order of the Commission. Respondents are further ORDERED to submit a modification of their February 9, 2022 subpoena request by February 25, 2022. Any such modified request should correct field 6 of the subpoena form to account for this matter being before the Commission.⁷

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

Vanessa A. Countryman
Secretary

⁵ See 17 C.F.R. § 200.30-14 (i)(1).

⁶ See *id.* § 200.30-14 (i)(2).

⁷ Respondents may also strike or remove the “Law Judges Form” notation from the bottom of the form.