

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6624 / June 12, 2024

Admin. Proc. File No. 3-21333

In the Matter of

GUSTAVO A. GUZMAN

RENEWED ORDER TO SHOW CAUSE

On March 6, 2023, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Gustavo A. Guzman, who is currently incarcerated, pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ On August 28, 2023, the Division of Enforcement filed a notice of service, which established that service of the OIP was made on Guzman on March 16, 2023, pursuant to Commission Rule of Practice 141(a)(2)(i).² When Guzman did not respond to the OIP, the Division moved for entry of a default judgment against Guzman, and on January 8, 2024, the Commission ordered him to show cause why he should not be deemed in default.³ On February 26, 2024, the Office of the Secretary received a letter from Guzman explaining that he had instructed his prior counsel to respond to the OIP and that, unbeknownst to Guzman, counsel failed to do so. Based on Guzman’s representations, the Commission issued an order discharging the show cause order and permitting Guzman until May 13, 2024 to file an answer to the OIP.⁴

As of the date of this order, Guzman has not filed an answer, responded to the Division’s motion, or otherwise defended this proceeding. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Guzman is ORDERED to SHOW CAUSE by July 30, 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, to respond to the Division’s motion, or to otherwise defend this proceeding. Guzman’s submission shall address the reasons for his failure to timely

¹ *Gustavo A. Guzman*, Advisers Act Release No. 6255, 2023 WL 2385776 (Mar. 6, 2023).

² 17 C.F.R. § 201.141(a)(2)(i).

³ *Gustavo A. Guzman*, Advisers Act Release No. 6524, 2024 WL 111149 (Jan. 8, 2024).

⁴ *Gustavo A. Guzman*, Advisers Act Release No. 6579, 2024 WL 1327398 (Mar. 27, 2024).

file an answer or response to the Division's motion, include a proposed answer to be accepted in the event that the Commission does not enter a default against him, and address the substance of the Division's request for sanctions. Guzman 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.⁵ If Guzman responds to this order to show cause, the Division may file a reply within 28 days after its service.

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.⁶ The OIP informed Guzman that a failure to file an answer could result in deeming him in default and determining the proceedings against him.⁷

The failure to timely oppose a dispositive motion is also a basis for a finding of default.⁸ Like failing to timely file an answer, failing to timely oppose such a motion 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.⁹

⁵ 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").

⁶ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁷ *Guzman*, 2023 WL 2385576, at *2.

⁸ 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).

⁹ 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.¹⁰ 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.¹¹

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 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).

¹¹ 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.").