

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6697 / September 17, 2024

Admin. Proc. File No. 3-20928

In the Matter of
RICHARD GEARHART

RENEWED ORDER DIRECTING PREHEARING CONFERENCE

On July 7, 2022, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) pursuant to Section 203(f) of the Investment Advisers Act of 1940 against Richard Gearhart.¹ After Gearhart filed an answer to the OIP, the Commission issued an order directing the parties to conduct a prehearing conference and to file a statement with the Office of the Secretary advising the Commission of any agreements reached at the conference.² If a prehearing conference were not held, the order required the parties to file a statement, jointly or separately, advising the Commission of that fact and of the efforts made to meet and confer.³ The Division of Enforcement filed a response to the order stating that it would attempt to schedule a prehearing conference with Gearhart who, at that time, was incarcerated.⁴

The Commission subsequently issued additional orders directing the Division to file, pursuant to specified schedules, status reports regarding its efforts to schedule a prehearing

¹ *Richard Gearhart*, Advisers Act Release No. 6064, 2022 WL 2531752 (July 7, 2022); 15 U.S.C. § 80b-3(f).

² *Richard Gearhart*, Advisers Act Release No. 6292, 2023 WL 3090039 (Apr. 25, 2023); *see also Gearhart*, 2022 WL 2531752, at *2 (OIP directing same).

³ *Gearhart*, 2023 WL 3090039, at *1; *see also Gearhart*, 2022 WL 2531752, at *2 (same).

⁴ It appears that Gearhart may now be located at a Residential Reentry Center in anticipation of his release later this year. *See Federal Bureau of Prisons Inmate Locator*, <https://www.bop.gov/inmateloc/> (search for Richard Gearhart); *Sean Kelly*, Exchange Act Release No. 94808, 2022 WL 1288179, at *3 n.19 (Apr. 28, 2022) (taking official notice of inmate locator search results pursuant to Rule of Practice 323; 17 C.F.R. § 201.323).

conference with Gearhart.⁵ The Division has not filed a response to the Commission's most recent order requesting such status reports.⁶

Accordingly, it is ORDERED that by October 17, 2024, the parties shall conduct a prehearing conference and file a statement with the Office of the Secretary advising the Commission of any agreements reached at the prehearing conference. If a prehearing conference is not held, both parties shall file by October 17, 2024, a statement, jointly or separately, advising the Commission of the efforts made to meet and confer and why those efforts were unsuccessful.

Pursuant to Rule of Practice 180(c), a party's failure to comply with this order may result in the Commission's determination of the matter at issue against that party, entry of a default, dismissal of the proceeding, or the prohibition of the introduction of evidence or the exclusion of testimony regarding the matter at issue.⁷ When a default is entered against a respondent, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that the respondent upon consideration of the record without holding a public hearing.⁸

We remind the parties that any document filed with the Commission must also be served upon all participants in the proceeding and be accompanied by a certificate of service.⁹

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

Vanessa A. Countryman
Secretary

⁵ *Richard Gearhart*, Advisers Act Release No. 6476, 2023 WL 7279482, at *1 (Nov. 3, 2023) (requiring filing of initial and supplemental reports); *Richard Gearhart*, Advisers Act Release No. 6570, 2024 WL 1012941, at *1 (Mar. 8, 2024) (directing the Division to file a report concerning the status of its efforts to hold a prehearing conference in this matter by April 5, 2024, and every 28 days thereafter until such conference is held).

⁶ *Gearhart*, 2024 WL 1012941.

⁷ 17 C.F.R. § 201.180(c).

⁸ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁹ *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.”).