

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89493 / August 6, 2020

INVESTMENT COMPANY ACT OF 1940
Release No. 33966 / August 6, 2020

Admin. Proc. File No. 3- 19243

In the Matter of

FIDELITY TRANSFER SERVICES, INC.
and
RUBEN SANCHEZ

ORDER TO SHOW CAUSE

On July 10, 2019, the Securities and Exchange Commission issued an Order Instituting Proceedings (“OIP”) against Fidelity Transfer Services, Inc., a registered transfer agent, and Ruben Sanchez, Fidelity’s only officer (collectively, “Respondents”), pursuant to Sections 17A(c) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940.¹ The OIP directed Respondents to file an answer to the allegations contained therein within twenty days of service of the OIP.²

On September 30, 2019, the Division filed a status report stating that, on September 9, 2019, it served the OIP on Fidelity Transfer Services, Inc., by certified mail at the address listed on its most recent registration form, pursuant to Rule of Practice 141(a)(2)(iii), which provides that service on a registered transfer agent “may be made . . . by sending a copy of the order addressed to the most recent business address shown on the person’s registration form by U.S. Postal Service certified”³ As of the date of this order, which is more than 20 days since service of the OIP, Fidelity has not filed an answer. On October 23, 2019, the Division filed a second status report in which it stated that it “has been unable to effect service on [Sanchez] as of

¹ *Fidelity Transfer Servs., Inc.*, Exchange Act Release No. 33550, 2019 WL 3035436 (July 10, 2019).

² *Id.* at *4.

³ *See* 17 C.F.R. §§ 201.144(a)(2)(iii).

today's date."⁴ Under the circumstances, it appears appropriate to require Fidelity, but not Sanchez, to show cause why it should not now be found in default.

Accordingly, Fidelity Transfer Services, Inc. is ORDERED to SHOW CAUSE by August 20, 2020, why it should not be deemed to be in default and why this proceeding should not be determined against it due to its failure to file and answer and to otherwise defend this proceeding. If Fidelity files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Fidelity does not file a response, the Division shall file a motion for default and other relief by September 17, 2020. The motion for default and other relief may be accompanied by additional evidence pertinent to the Commission's individualized assessment of whether the requested relief is in the public interest.⁵ The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.⁶ The failure to timely oppose a dispositive motion is itself a basis for a finding of default.⁷ Such failure 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.⁸

⁴ In accordance with an earlier order, the Division is directed to file monthly status reports regarding its efforts to effect service on Sanchez. *See Fidelity Transfer Services, Inc.*, Exchange Act Rel. No. 87248, 2019 WL 4954844 (October 8, 2019). In the alternative, given the Division's statement that "it has exhausted all known addresses for Sanchez," the Division is directed to inform the Commission if it has abandoned its effort to effect service on Sanchez.

⁵ *See generally Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012) (requiring "meaningful explanation for imposing sanctions"); *McCarthy v. SEC*, 406 F.3d 179, 190 (D.C. Cir. 2005) ("each case must be considered on its own facts"); *Gary McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *1 (Apr. 23, 2015); *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016); *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at *3-4 (Feb. 4, 2010), *appeal after remand*, Exchange Act Release No. 63720, 2011 WL 121451, at *5-8 (Jan. 14, 2011).

⁶ *See* 17 C.F.R. §§ 201.154, 201.160 (Commission Rules of Practice 154 and 160).

⁷ *See* 17 C.F.R. §§ 201.155(a)(2), 201.180(c) (Commission Rules of Practice 155(a)(2) and 180(c)); *see, e.g., Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498 at *3 n.12 (Jan. 3, 2017).

⁸ *See e.g., McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sept. 29, 2017); *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2-3 (Mar. 30, 2017); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 n.6 (Apr. 13, 2006).

The parties' attention is called to the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that pending further order of the Commission parties to the extent possible shall submit all filings electronically at apfilings@sec.gov.⁹

Upon review of 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 General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

⁹ See *Pending Administrative Proceedings*, Exchange Act Release No. 88415, <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.