

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20913

In the Matter of

THE BRIAN MADISON CARNES
TRUST,

Respondent.

THE DIVISION OF ENFORCEMENT'S
MOTION FOR A DEFAULT AND REVOCATION ORDER
AND SUPPORTING MEMORANDUM

The Division of Enforcement (“the Division”) respectfully requests that the Commission find the Brian Madison Carnes Trust (the “Trust”) in default and revoke the Trust’s registration as a transfer agent.

PRELIMINARY STATEMENT

The OIP alleges that the Trust, a registered transfer agent, has violated various statutes and regulations governing such entities, including by filing an inaccurate Form TA-1, failing to file required annual reports, and failing to furnish required records for examination. Because the Trust is in default, the Commission should enter an Order revoking the Trust’s registration as a transfer agent to protect the investing public.

ARGUMENT

I. The Respondent Should Be Deemed In Default.

The Commission may deem a party in default where the party fails to answer or otherwise defend a proceeding. Commission Rules of Practice (“ROP”) 155(a)(2) and 220(f). The Trust was served with the OIP on July 6, 2022, but did not file an Answer, prompting the Commission to issue an order requiring the Trust to show cause, by August 19, 2022, why a default judgment should not be entered against it. *See* Release No. 95441 (August 5, 2022). The Trust did not respond to the Show Cause Order. *See* Release No. 95904 (September 23, 2022). Having failed to take advantage of multiple chances to defend itself, the Trust should be deemed in default.

II. The Trust Willfully Violated The Exchange Act And Rules Promulgated Thereunder.

Because the Trust is in default, the Commission may deem the OIP allegations to be true, drawing all reasonable inferences therefrom, and decide the claims against the Trust. ROP 155(a)(2) and 180(c); *Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009) (interpreting Fed. R. Civ. P. 55, the equivalent to ROP 155). The OIP, the additional information submitted with this Motion, and the reasonable inferences therefrom establish that the Trust willfully violated the Exchange Act and rules promulgated thereunder.

A. The Trust Willfully Filed An Inaccurate Form TA-1.

The allegations of the OIP establish that, on January 20, 2021, the Trust, which had already registered as a transfer agent, filed an amended Form TA-1 to change its address. In the blank for the address of the Trust’s principal office, defined on the form as the place

“where transfer agent activities are, or will be, performed,” the Trust provided a post office box. OIP at ¶¶3-4. The Commission can reasonably infer that Brian Carnes, the Trust’s Treasurer, and the person who filed the inaccurate Form TA-1, knew the location of the place where the Trust’s transfer agent activities are, or would be, performed. Notwithstanding that knowledge, the Trust intentionally and incorrectly reported its “principal office” as a post office box.

These allegations and the reasonable inferences drawn from these allegations establish that the Trust’s provision of inaccurate information to the SEC was willful. “To act willfully for purposes of the federal securities laws means that a person intentionally committed the act which constitutes the violation.” *In re Richard Allen Riemer, Jr.*, Release No. 84513, 2018 WL 5668898, at *4 (Oct. 31, 2018) (internal punctuation and citations omitted). The respondent need not “also be aware that he is violating one of the Rules or Acts; rather, it simply requires the voluntary commission of the acts themselves.” *Id.* (internal punctuation and citations omitted).

Based on the OIP’s allegations, the Trust’s filing of the Form TA-1 is a willful violation of Section 17A(c)(2) of the Exchange Act [15 U.S.C. § 78q-1] and 17 C.F.R. § 240.17Ac2-1(a), which require transfer agents to complete a Form TA-1 according to its instructions. The Trust’s action also constitutes a willful violation of Section 17A(d)(1) of the Exchange Act [15 U.S.C. §78q-1(d)(1)], which prohibits transfer agents from violating the Commission’s rules and regulations.

B. The Trust Willfully Failed To Amend The Form TA-1.

The allegations of the OIP establish that the address for the Trust's principal office listed on the January 20, 2021 Form TA-1 was inaccurate when that form was filed, that an amendment to correct the address was due by March 22, 2021, and that the Trust never filed the amendment. OIP at ¶¶3-6.

The Trust knew that a change in the address of its principal office required an amended Form TA-1 as evidenced by the fact that it filed the January 20, 2021 Form TA-1 to notify the Commission of such a change. *See* OIP at ¶¶4. After the amendment was due, the Trust made additional filings with the Commission demonstrating that it was not under any disability that would prevent it from filing an amendment. OIP at ¶7. Certainly, the Trust knew that an amendment was required by July 6, 2022, when it received actual notice of the OIP through a mailing delivered to the post office box the Trust had provided to the Commission. *See* August 3, 2022 Declaration of Samantha M. Williams. Silence or inaction in response to notice of wrongful conduct is evidence of an intent to affirm the wrongful act.¹ Here, even after receiving the OIP, the Trust did not file an amendment, *see*

¹ *See Villanueva v. Brown*, 103 F.3d 1128, 1138 (3d Cir. 1997) (a principal's intent to ratify the wrongful act of an agent "may be inferred from the failure to repudiate an unauthorized act [or] from inaction"); *cf. Brink's Inc. v. City of New York*, 717 F.2d 700, 706 (2d Cir. 1983) ("inaction" by management with knowledge of employee's wrongful acts was sufficient evidence of intent for an award of punitive damages).

Edgar Report on CIK 1809973;² nor has the Trust filed anything with the Commission asserting an innocent explanation for its failure to amend.

The Trust's failure to amend the January 20, 2021 Form TA-1 is a willful violation of Section 17A(c)(2) of the Exchange Act and 17 C.F.R. § 240.17Ac2-1(c), which requires transfer agents to amend a Form TA-1 within sixty days following the date on which any information therein became inaccurate, misleading, or incomplete, and is also a willful violation of Section 17A(d)(1).

C. The Trust Willfully Failed To File The 2021 Annual Report.

The allegations of the OIP establish that the Trust filed an annual report for 2020 but, notwithstanding its knowledge that an annual report was required, did not file the 2021 annual report, a voluntary act. *See* OIP at ¶7. Moreover, as of July 6, 2022, the Trust knew that the 2021 annual report had not been filed through the OIP. The Trust's continued failure to file the 2021 annual report, *see* Edgar Report on CIK 1809973, and failure to assert an innocent explanation in this proceeding is additional evidence that the failure was intentional. The Trust's failure to file the 2021 annual report is a willful violation of Section 17A(c)(2) of the Exchange Act and 17 C.F.R. § 240.17Ac2-2(a), which require transfer agents to file annual reports, and is also a willful violation of Section 17A(d)(1).

² The Commission may take official notice of any matter in the public official records of the Commission. 17 C.F.R. § 201.323. The most current version of the Edgar Report regarding the Trust can be found at the following link: <https://www.sec.gov/edgar/browse/?CIK=1809973>.

D. The Trust Willfully Failed To Furnish Required And Other Records For Examination.

The allegations of the OIP establish that on May 21, 2021, in furtherance of an examination, the staff in the Commission's Division of Examinations ("Examinations") sent the Trust a document request to the email address the Trust had provided to the Commission on the Form TA-1. OIP at ¶10. Examinations did not receive an error message indicating that the email could not be delivered, giving rise to an inference that the Trust received the document requests. *Id.*; see also *Gezu v. Charter Commc'ns*, 17 F.4th 547, 553–54 (5th Cir. 2021) (credible evidence that document was emailed creates a presumption of receipt).

The list of documents Examinations sought to examine included records required to be kept and maintained by SEC regulations ("Required Records"), as well as other documents. *Id.*; see also Authenticating Declaration of Samantha M. Williams.³ The Trust did not respond to the document requests; nor did it respond to the Staff's email or follow up emails. See OIP at ¶10. Evidence that the Trust received the document requests and did not respond is evidence that the failure to respond was intentional.

³ The Staff's document request sought records required to be kept and maintained by the following SEC regulations: 17 CFR 240.17f-2(d) (fingerprint files and a list of persons not exempt from fingerprinting requirements); 17 CFR 240.17Ad-10 (master Securityholder Files (defined in 17 CFR 240.7Ad-9 as the official list of individual securityholder accounts)); 17 CFR 240.17Ad-6(8) (contracts and other documents appointing or terminating the transfer agent); 17 CFR 240.17Ad-16(d)(3) (notices of assumption or termination of transfer agent services); 17 CFR 240.17Ad-17(d) (documentation of efforts to ascertain the correct address of lost and unresponsive securityholders); 17 CFR 240.17Ad-19(c)-(d) (written procedures for the cancellation, storage, transportation, destruction, or other disposal of securities certificates). See Authenticating Declaration and attached document request.

The Trust's intentional failure to furnish Required Records to the SEC is a willful violation of Section 17(a)(1) of the Exchange Act [15 U.S.C. § 78q], which requires transfer agents to furnish records required by SEC regulations to the SEC on request, and a willful violation of Section 17(b)(1) [15 U.S.C. § 78q(b)(1)], which makes all transfer agent records, required or otherwise, subject to examination by the Commission.

III. Revocation Is The Appropriate Sanction.

Pursuant to Section 17A(c)(3) of the Exchange Act, the Commission shall revoke the registration of a transfer agent if the transfer agent engaged in certain wrongful acts and if revocation is in the public interest. *See* 15 U.S.C. 78q-1(c)(3).

A. The Trust's Conduct Satisfies The Prerequisite For Remedial Action.

The wrongful acts upon which revocation may be based include: (1) willfully violating any provision of the Exchange Act and the rules and regulations promulgated thereunder; and (2) willfully making a false or misleading statement of material fact in an application for registration filed with the Commission. *See* 15 U.S.C. 78q-1(c)(3) and Exchange Act Section 15(b) [15 U.S.C. §78o(b)(4)(A) and (D)]. As discussed above, the Trust willfully violated several provisions of the Exchange Act and the rules and regulations promulgated thereunder. Moreover, by filing the January 20, 2021 Form TA-1, the Trust made a false and misleading statement of material fact in an application for registration filed with the Commission. *Cf. In re Fid. Transfer Servs., Inc. et al.*, Release No. 34548, 2022 WL 969898, at *6 (Mar. 29, 2022) (failing to file an amended Form TA-1 to correct inaccurate address is a false and misleading statement and omission of material information).

B. Revocation Is In The Public Interest.

In determining the appropriate remedy, the Commission considers the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of its conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. *Fid. Transfer Servs.*, 2022 WL 969898, at *6. The inquiry is flexible and no single factor is dispositive. *Id.*

“The Commission's oversight of transfer agents is substantially dependent on its transfer agent examination process.” *In re Phlo Corp.*, Release No. 307, 2006 WL 372657, at *19 (Feb. 17, 2006). The Commission has repeatedly held that violations that hinder or prevent the Commission from conducting an examination of a transfer agent – such as failing to provide the Commission with an accurate principal office address or failing to respond to document requests – are egregious. *Id.* at *19-22, 28 (transfer agents' failure to timely provide some records and failure to provide others was egregious); *Fid. Transfer Servs.*, 2022 WL 969898, at *6 (transfer agent's failure to correct its address and failure to respond to document requests constituted egregious violations because the conduct frustrated the Commission's regulatory efforts); *In re Select Fid. Transfer Servs., Ltd.*, Release No. 718, 2014 WL 7145632 (Dec. 15, 2014) (transfer agent's failure to maintain a current address with the Commission was egregious). As in these cases, the Trust's violations prevented the Commission staff from carrying out the Commission's regulatory oversight function and are, therefore, egregious.

The Trust's violations are recurrent in that they constitute five separate acts and/or omissions giving rise to multiple securities law violations. The same facts that establish that the Trust's violations are willful establish that the Trust's violations were intentional, not mistaken or inadvertent. *See China-Biotics, Inc.*, Release 70800, 2013 WL 5883342, at *19, n.60 (Nov. 4, 2013) (the scienter inquiry focuses on whether the violation was intentional as opposed to inadvertent or mistaken). The Trust has given no assurances against future violations; nor has it recognized the wrongful nature of its conduct. The Trust's demonstrated unwillingness to comply with fundamental filing requirements and repeated refusal to cooperate with Commission examinations indicates a likelihood that, but for revocation, the Trust would not only engage in future violations, but would also engage in conduct that might have the effect of preventing the Commission from identifying and addressing those violations. *Fid. Transfer Servs., Inc.*, 2022 WL 969898, at *6 (transfer agent's failure to file amended Form TA-1 to correct its address, failure to file annual reports, and failure to participate in examination was strong evidence that it would commit future violations).

Together, these factors merit revocation of the Trust's transfer agent registration to protect the investing public.

CONCLUSION

For the reasons set forth above, the Division respectfully requests that the Commission find the Trust to be in default and revoke the Trust's registration as a transfer agent.

Dated: October 7, 2022

Respectfully submitted,

/s/ Samantha M. Williams

Samantha M. Williams

Trial Counsel

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Washington, D.C. 20549-3977

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Counsel for the Division of Enforcement

CERTIFICATE OF SERVICE

I hereby certify that I caused the forgoing paper to be served on October 7, 2022 in the manner set forth below:

Via eFap:
Office of the Secretary

Via email:
Brian Madison Carnes Trust
c/o Brian Madison Carnes



/s/ Samantha M. Williams
Samantha M. Williams

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20913

In the Matter of

THE BRIAN MADISON CARNES
TRUST,

Respondent.

AUTHENTICATING DECLARATION
OF SAMANTHA M. WILLIAMS

SAMANTHA M. WILLIAMS, pursuant to 28 U.S.C. § 1746, declares:

1. I am a Trial Lawyer with the Division of Enforcement of the Securities and Exchange Commission and counsel for the Division in the above-captioned administrative proceeding.

2. Attached is a true and correct copy of a May 21, 2021 document request sent to Respondent by the staff in the Commission's Division of Examinations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 7, 2022

/s/ Samantha M. Williams
Samantha M. Williams

CERTIFICATE OF SERVICE

I hereby certify that I caused the forgoing paper to be served on October 7, 2022 in the manner set forth below:

Via eFap:
Office of the Secretary

Via email to:
Brian Madison Carnes Trust
c/o Brian Madison Carnes



/s/ Samantha M. Williams
Samantha M. Williams



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
EXAMINATIONS

May 21, 2021

VIA SECURE EMAIL
brian-madison@cfreonline.com

Brian Madison Carnes, Treasurer
Brian Madison Carnes Trust



Re: Examination of Brian Madison Carnes Trust (SEC File No 084-06706)

Dear Mr. Carnes:

The staff of the U.S. Securities and Exchange Commission (the “Staff”) is conducting an examination of the above-captioned Firm pursuant to Section 17(a) and (b) of the Securities Exchange Act of 1934. The purpose of the examination is to assess the Firm’s compliance with the securities laws and the rules thereunder.

The Staff recognizes that COVID-19 may have adversely affected the Firm’s operations and its ability to reply promptly to this request.¹ As such, the Staff is ready to work with the Firm, as needed, to address the timing of our information requests and the availability of the Firm’s personnel for interviews. Consistent with physical distancing guidelines and to minimize disruption at the Firm, the Staff will be conducting this examination through correspondence.

Additional information about compliance examinations and the examination process is included in the enclosed “*Examination Information*” brochure (SEC Form 2389). Also enclosed is information regarding the Commission’s authority to obtain the information requested and additional information: “*Supplemental Information for Entities Directed to Supply Information to the Commission Other Than Pursuant to Commission Subpoena*” (SEC Form 1661).

Information Requested

Please provide all of the information specified in the enclosed information request list by June 4, 2021. As stated above, if the Firm is unable to meet this deadline due to COVID-19’s impact on its operations, please contact the undersigned at the telephone number indicated. The Staff

¹ Please also see *OCIE Statement on Operations and Exams – Health, Safety, Investor Protection and Continued Operations are our Priorities* (Mar. 23, 2020) at <https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued>.

requests that documents be provided in an electronic format to the extent possible as set forth in greater detail below.

If the Firm becomes aware of the need for delay in the production of any requested information, including due to COVID-19-related reasons, the Firm should immediately contact the undersigned at the telephone number indicated. During the examination, the Staff may also request additional or follow-up information, and will discuss timeframes for the Firm to produce this information.

Data Delivery

Please provide all requested documents in electronic format whenever possible. Unless a file format is specifically requested by the exam team, please provide all requested data in the file format ordinarily used and maintained by your business (i.e., “native format”). For example, if a requested spreadsheet is created by your business in Microsoft Excel, produce the file in Microsoft Excel format.

Please contact the exam team if you have any questions regarding file format or if the nature of your production requires additional data delivery guidance or technical specifications. If you are producing a Concordance load file, please ask exam staff for additional guidance.

The requested electronic data may be delivered through the following methods:

Secure and Preferred Methods:

- **Kiteworks.** Kiteworks is the Staff’s preferred file transfer system. The use of Kiteworks should minimize the risk of inadvertently disclosing or compromising personally identifiable information (PII). Kiteworks may also be quicker and less expensive than other delivery methods. The SEC External Guide for Using Kiteworks can be found on sec.gov or by clicking here: <https://www.sec.gov/about/offices/ocie/kiteworksguide.pdf>
- **Secure Email.** Secure Email (smail) encrypts emails and attachments sent to the SEC. For attachments under 15MBs, smail is a preferred and secure delivery method. To use smail, you must first register with Zixmail. The SEC External Guide for Using the E-mail Encryption Solution, which includes Zixmail registration instructions, can be found on sec.gov or by clicking here: <https://www.sec.gov/about/offices/ocie/secureemailguide.pdf>
- **Transport Layer Security.** If your business has created a Transport Layer Security (TLS) connection with the SEC, you may securely send the requested data via email.

Disfavored Methods:

- **Unencrypted Email.** Sending documents through unencrypted email is not secure. There is a risk it may be intercepted and revealed to outside parties. Emailing password protected files reduces the risk, but this method remains inferior to TLS or smail.
- **Electronic Media.** Electronic media such as hard drives, compact disks, thumb drives and laptops are also a disfavored means of data delivery. There is a heightened risk that information on electronic media could be lost or stolen. Any produced electronic media should be encrypted. If your business chooses to provide documents on electronic media, please provide passwords separately either via email or in a separate cover letter from the electronic media. Please be advised that such electronic media may be retained, returned or destroyed.

Your cooperation is greatly appreciated in the examination process. . If you have any questions, please contact Brian Kobil at 202-551-6299 or Claudia Veloso at 212-336-1033.

Sincerely,

Eric B. Garvey
Assistant Director

Enclosures:

- Information Request List
- Examination Information Brochure (Form 2389)
- Supplemental Information (Form 1661)

Information Request List

Please label the information so that it corresponds to the item number in the request list. If information provided is responsive to more than one request item, you may provide it only once and refer to it when responding to the other request item numbers. If any request item does not apply to your business, please indicate “N/A” (not applicable) and provide an explanation. Please provide the information listed below from the period from January 1, 2021 through present (the “Review Period”) unless otherwise indicated. This request applies to all documents in the Registrant’s possession, custody, or control maintained at the Registrant’s office(s) or at any other location including, but not limited to, any associated person’s personal residence.

1. Organizational chart indicating officials and clerical staff engaged in transfer agent (“TA”) and related activities.
2. List of all current full-time and part-time employees.
3. Description of the TA’s business, including:
 - Experience in the TA industry;
 - Types of securities that the TA services or plans to service;
 - Affiliated securities-related business(es); and
 - Other non-securities related business(es).
4. Copy of Form TA-1 and the latest amendment/supplement filed (Rule 17Ac2-1).
5. Copy of current Form TA-2 (Rule 17Ac2-2).
6. Access to fingerprint files for required personnel (Rule 17f-2). Include the list of persons not exempted from fingerprinting and the list of persons exempted from fingerprinting (Rule 17f-2 (e)).
7. List of issues for which services are rendered that indicates for each issue:
 - CUSIP numbers;
 - Number of shares/bonds outstanding and/or authorized;
 - Approximate dollar value of outstanding shares;
 - Number of shares/bonds out-of-proof; and
 - Number of securityholders (Rule 17Ad-10).
8. Appointment and/or termination documentation or other contract/document concerning the services the TA entity performs (or did perform) for each issuer (Rule 17Ad-6(a)(8)).
9. Description of safeguards employed by the TA to safeguard funds and securities certificates in its possession (Rule 17Ad-12).
10. All notices sent to the Depository Trust Company (“DTC”) pursuant to Rule 17Ad-16 (e.g., regarding assumption or termination of transfer agent services).

11. Copy of procedures describing the methodology to search for lost securityholders pursuant to Rule 17Ad-17(c).
12. Copy of written procedures for the cancellation, storage, transportation, destruction, or other disposal of securities certificates (Rule 17Ad-19(c)).
13. List of all persons authorized to sign certificates and checks (with evidence of signature).
14. List of all current or past civil litigation(s) within the prior two years. Access to litigation files.
15. Copy of the TA's complaint file.
16. Schedule of fees (for the TA's full and partial services).
17. Copy of the TA's fidelity bond.
18. Copy of the TA's written supervisory procedures and/or operations manual.
19. List of all software and systems utilized in connection with the processing of transfers and the maintenance of the TA's books and records. For each, please provide the associated function (e.g., transfer, updating shareholder account, updating master securityholder file).
20. List of all third party service providers involved in advising the TA or assisting the TA in registering with the Commission.