

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 90673 / December 15, 2020

Admin. Proc. File No. 3-19775

In the Matter of  
  
LEE C. SCHLESINGER

ORDER TO SHOW CAUSE

On April 29, 2020, the Securities and Exchange Commission issued an Order Instituting Proceedings (“OIP”) against Lee C. Schlesinger pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> The OIP directed Schlesinger to file an answer within 20 days of service and informed him that a failure to file an answer could result in him being deemed in default and the proceedings being determined against him.<sup>2</sup> On June 4, 2020, the Division of Enforcement filed a notice of service appending a process server’s affidavit stating that service was effected on May 30, 2020, pursuant to Commission Rule of Practice 141(a)(2)(i).<sup>3</sup>

On September 29, 2020, nearly four months after service of the OIP, Schlesinger filed an answer. Schlesinger filed no request for an extension of the time in which to do so, and the answer made no reference to, nor contained an explanation for, its lateness.<sup>4</sup>

Accordingly, Schlesinger is ORDERED to SHOW CAUSE by January 15, 2021, why the Commission should accept his answer and not find him in default due to his failure to file it timely. Commission rules provide that, when a party defaults, the allegations in the OIP may be deemed to be true and the Commission may determine the proceeding against that party upon

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<sup>1</sup> *Lee C. Schlesinger*, Exchange Act Release No. 88773 (April 29, 2020), <https://www.sec.gov/litigation/admin/2020/34-88773.pdf> (“OIP”); *see* 15 U.S.C. § 78o(b).

<sup>2</sup> OIP at 3; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

<sup>3</sup> 17 C.F.R. § 201.141(a)(2)(i).

<sup>4</sup> *See* Rule of Practice 161, 17 C.F.R. §§ 201.161 (outlining procedures for requesting extensions and factors weighed in considering such requests).

consideration of the record without holding a public hearing.<sup>5</sup> The Division may file an opposition brief to Schlesinger's response within 21 days after its service.

If Schlesinger does not file a response, the Division may file a motion for default and other relief by February 16, 2021. 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 appropriate and in the public interest.<sup>6</sup> The failure to timely oppose a dispositive motion is itself a basis for a finding of default;<sup>7</sup> it 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.<sup>8</sup>

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](mailto:apfilings@sec.gov).<sup>9</sup>

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

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<sup>5</sup> Rules of Practice 155, 180, 17 C.F.R. § 201.155, .180.

<sup>6</sup> 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").

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

<sup>8</sup> See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at \*3-5 (Sep. 29, 2017); *Bennett Group 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).

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