

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 95441 / August 5, 2022

Admin. Proc. File No. 3-20913

In the Matter of  
  
THE BRIAN MADISON CARNES TRUST

ORDER TO SHOW CAUSE

On June 30, 2022, the Securities and Exchange Commission issued an Order Instituting Administrative Proceedings (“OIP”) against the Brian Madison Carnes Trust (the “Trust”) pursuant to Section 17A(c)(3) Securities Exchange Act of 1934.<sup>1</sup> The OIP directed the Trust to file an answer to the allegations contained therein within twenty days of service of the OIP.<sup>2</sup>

On August 3, 2022, the Division of Enforcement filed a status report stating that, on July 6, 2022, it served the OIP on the Trust 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 . . . mail and obtaining a confirmation of attempted delivery.”<sup>3</sup> As of the date of this order, which is more than 20 days since service of the OIP, the Trust has not filed an answer. It is thus appropriate to require the Trust to show cause why it should not now be found in default.

Accordingly, the Trust is ORDERED to SHOW CAUSE by August 19, 2022, 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. The Trust’s submission shall address the reasons for its failure to timely file an answer, and include a proposed answer to be accepted in the event the Commission does not enter a default against it.

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

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<sup>1</sup> *The Brian Madison Carnes Trust*, Exchange Act Release No. 95181, 2022 WL 2357042 (June 30, 2022).

<sup>2</sup> *Id.* at \*4.

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

without holding a public hearing.<sup>4</sup> The OIP informed Respondent that a failure to file an answer could result in deeming it in default and determining the proceeding against it.<sup>5</sup>

If the Trust files a response to this order to show cause, the Division may file a reply within 14 days after its service. If the Trust does not file a response, the Division shall file a motion for default and other relief by September 16, 2022. 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.<sup>6</sup> The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.<sup>7</sup> The failure to timely oppose a dispositive motion is itself a basis for a finding of default;<sup>8</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>9</sup>

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.<sup>10</sup>

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<sup>4</sup> Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

<sup>5</sup> *The Brian Madison Carnes Trust*, 2022 WL 2357042, at \*4.

<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 (2d Cir. 2005) (stating that "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).

<sup>7</sup> See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, 201.160.

<sup>8</sup> See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), 201.180(c); see, e.g., *Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at \*3 n.12 (Jan. 3, 2017).

<sup>9</sup> 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), *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).

<sup>10</sup> *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81.

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 the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman  
Secretary