

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95904 / September 23, 2022

Admin. Proc. File No. 3-20913

In the Matter of

THE BRIAN MADISON CARNES TRUST

ORDER DIRECTING SUBMISSION FROM THE DIVISION OF ENFORCEMENT

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) of the Securities Exchange Act of 1934.¹ On August 5, 2022, the Trust was 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 an answer and to otherwise defend this proceeding.² The order to show cause also directed the Division of Enforcement, in the event that the Trust did not file a response to the order, to file a motion for default and other relief by September 16, 2022.³

The show cause deadline passed without any filing by the Trust. Yet the Division has not moved for default and other relief by the deadline for doing so. The Division of Enforcement is thus ORDERED to file a motion for default and other relief by October 7, 2022, to be accompanied by additional evidence pertinent to the Commission’s individualized assessment of whether the requested relief is in the public interest.⁴ The Division’s motion must further explain

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

² *The Brian Madison Carnes Trust*, Exchange Act Release No. 95441, 2022 WL 3138584, at *1 (Aug. 5, 2022).

³ *Id.*

⁴ *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*,

with reference to specific Commission rules how the records that the OIP alleged that Commission staff had sought from the Trust were “required records” under Commission rules.⁵ The parties thereafter may file opposition and reply briefs in response to the motion for default and other relief 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 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.⁸

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 e-filing requirements.⁹

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

Vanessa A. Countryman
Secretary

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).

⁵ See *The Brian Madison Carnes Trust*, 2022 WL 2357042, at *1-2 (alleging that records sought were required to be maintained); *Fidelity Transfer Servs., Inc.*, Exchange Act Release No. 90674, 2020 WL 7364200 (Dec. 15, 2020) (ordering explanation of and evidence supporting OIP’s allegation that requested records at issue were required to be maintained).

⁶ See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, 201.160.

⁷ 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).

⁸ See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sep. 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).

⁹ *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.