

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97961 / July 21, 2023

Admin. Proc. File No. 3-21214

In the Matter of
JOSHUA ABRAHAMS, CPA

ORDER REQUESTING ADDITIONAL MATERIALS REGARDING SUBPOENAS

On October 21, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Joshua Abrahams, CPA, pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice.¹ On April 3, 2023, the Commission issued an order, reflecting the parties’ joint stipulation, that provided fact discovery would close on July 31, 2023.² On June 8, 2023, the Commission issued an order, reflecting another joint stipulation, that authorized additional depositions for each party.³

On July 6, 2023, Respondent requested, pursuant to Rule of Practice 232, the issuance of subpoenas for the depositions of four individuals.⁴ Rule 233 of the Commission’s Rules of Practice provides that a deposition may be taken in proceedings under the 120-day timeframe, as is this matter, “upon written notice.”⁵ The rule also states that attendance at such a deposition “may be ordered by subpoena issued pursuant to” Rule 232.⁶ Thus, although the “Rules of Practice provide for a procedure to *compel* attendance at a deposition,” they “do not require that

¹ *Joshua Abrahams, CPA*, Exchange Act Release No. 96127, 2022 WL 13566785 (Oct. 21, 2022).

² *Joshua Abrahams, CPA*, Exchange Act Release No. 97238, 2023 WL 2771179 (Apr. 3, 2023).

³ *Joshua Abrahams, CPA*, Exchange Act Release No. 97669, 2023 WL 3931438 (June 8, 2023).

⁴ See 17 C.F.R. § 201.232.

⁵ 17 C.F.R. § 201.233(a); see *Joshua Abrahams, CPA*, 2022 WL 13566785, at *13 (“This proceeding shall be deemed to be one under the 120-day timeframe . . .”).

⁶ 17 C.F.R. § 201.233(a)(4) (emphasis added).

a subpoena be issued for every deposition.”⁷ Where a witness has voluntarily made himself or herself available and there is no dispute between the parties over taking the deposition, written notice without a request “for issuance of a subpoena made to the Commission, or any member thereof” is sufficient.⁸

It is not clear from the July 6 request whether subpoenas are necessary to compel the depositions of the individuals in question (*e.g.*, they have otherwise declined to appear). If Respondent believes that he needs to secure a subpoena, the request must be modified to account for the time needed for the Commission to consider it.⁹ In this proceeding, as in other proceedings that have been set for a hearing before the Commission, the Commission has delegated to the Office of the General Counsel authority “[t]o determine procedural requests or similar prehearing matters” and “[t]o rule upon non-dispositive, prehearing motions.”¹⁰ But the Commission has not delegated authority to the Office of the General Counsel to issue subpoenas.¹¹ Thus, it is the Commission itself that must consider and act on any requests to issue a subpoena, including the July 6 request. Given these circumstances, Respondent should request that the subpoenas be issued for dates and times that will afford the Commission sufficient time to consider his request and for the depositions to be arranged should the Commission issue the requested subpoenas.

If in light of the forgoing discussion, Respondent elects to withdraw the request for subpoenas, IT IS ORDERED that he file a statement to that effect by July 28, 2023. Otherwise, it is ORDERED that Respondent shall submit a modification of the July 6 subpoena request by July 28, 2023. Any such modified request should correct field 6 of the subpoena form to account for this matter being before the Commission.¹² If a modified request is filed, it is further

⁷ See *Horter Inv. Mgt., LLC*, Advisers Act Release No. 5953, 2022 WL 294321, at *1 (Jan. 31, 2022) (emphasis added).

⁸ 17 C.F.R. § 201.232(a)(1).

⁹ See *Horter Inv. Mgt., LLC*, Advisers Act Release No. 5969, 2022 WL 504544, at *1 (Feb. 18, 2022) (setting forth a similar procedure).

¹⁰ See 17 C.F.R. § 200.30-14 (i)(1).

¹¹ See *id.* § 200.30-14 (i)(2).

¹² The “Law Judges Form” notation from the bottom of the form may also be stricken.

ORDERED that the current deadline for the completion of fact discovery be suspended until further order of the Commission.¹³

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

Vanessa A. Countryman
Secretary

¹³ The parties may seek (or the Commission may consider on its own motion) modifications to other deadlines set forth in the scheduling order.