

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98006 / July 27, 2023

Admin. Proc. File No. 3-21344

In the Matter of
JOHN CUCINELLA

ORDER TO SHOW CAUSE

The Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) on March 17, 2023, pursuant to Section 15(b) of the Securities Exchange Act of 1934, against respondent John Cucinella.¹ On June 1, 2023, the Division of Enforcement filed a declaration of Preethi Krishnamurthy, which establishes that service of the OIP was made on Cucinella on May 24, 2023, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.

As stated in the OIP, Cucinella’s answer was required to be filed within 20 days of service of the OIP. As of the date of this order, Cucinella has not filed an answer to the OIP or a response to the Division’s motion. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Cucinella is ORDERED to SHOW CAUSE by August 28, 2023, why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer or to otherwise defend this proceeding. Cucinella’s submission shall address the reasons for his failure to timely file an answer and include a proposed answer to be accepted in the event that the Commission does not enter a default against him.

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 without holding a public hearing.² The OIP informed Cucinella that a failure to file an answer could result in deeming him in default and determining the proceedings against him.³

¹ *John Cucinella*, Exchange Act Release No. 97155, 2023 WL 2559844 (Mar. 17, 2023).

² Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

³ *Cucinella*, 2023 WL 2559844, at *2.

If Cucinella files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Cucinella does not file a response, the Division shall file a motion for entry of an order of default and the imposition of remedial sanctions by September 11, 2023. The motion for sanctions should address each statutory element of the relevant provisions of Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.⁴ The motion should discuss relevant authority relating to the legal basis for, and the appropriateness of, the requested sanctions and include evidentiary support sufficient to make an individualized assessment of whether those sanctions are in the public interest.⁵ The parties may file opposition and reply briefs 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

⁴ See, e.g., *Shawn K. Dicken*, Exchange Act Release No. 89526, 2020 WL 4678066, at *2 (Aug. 12, 2020) (requesting additional information from the Division “regarding the factual predicate for Dicken’s convictions” and “why these facts establish” the need for remedial sanctions); see also *Shawn K. Dicken*, Exchange Act Release No. 90215, 2020 WL 6117716, at *1 (Oct. 16, 2020) (clarifying the additional information needed from the Division).

⁵ See generally *Rapport 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 L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *1, *3 (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).

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

⁷ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); see, e.g., *Behnam 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).

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.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁹

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

Vanessa A. Countryman
Secretary

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 redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.