

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98105 / August 10, 2023

Admin. Proc. File No. 3-21270

In the Matter of

JUSTIN W. KEENER

ORDER SCHEDULING BRIEFS

On January 10, 2023, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Justin W. Keener (“Respondent”) pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On July 24, 2023, the Commission directed the parties to file a status report addressing whether either party planned to file a motion for summary disposition and, if so, whether the parties had a proposed briefing schedule.² On August 3, 2023, the Division of Enforcement filed a status report, on behalf of itself and Respondent, stating that they had agreed the Division would file a motion for summary disposition on an agreed-upon briefing schedule.³ Given the parties’ agreement, we believe it is appropriate to set the following briefing schedule.

¹ *Justin W. Keener*, Exchange Act Release No. 96627, 2023 WL 155182 (Jan. 10, 2023).

² *Justin W. Keener*, Exchange Act Release No. 97968, 2023 WL 4741157 (July 24, 2023).

³ *See* 17 C.F.R. § 201.250(b) (providing that summary disposition is appropriate if “there is no genuine issue with regard to any material fact and . . . the movant is entitled to summary disposition as a matter of law”). Motions for summary disposition may be made under Rule of Practice 250(b) after a respondent’s answer has been filed and documents have been made available to the respondent for inspection and copying pursuant to Rule of Practice 230. *Id.*; 17 C.F.R. § 201.230. Respondent filed an answer, and the Division’s status report reflects that the Division has made documents available pursuant to Rule 230.

Accordingly, it is ORDERED that the Division's motion for summary disposition shall be filed by August 25, 2023; Respondent's opposition shall be filed by September 22, 2023; and the Division's reply shall be filed by October 6, 2023.⁴

A brief in support of a motion for summary disposition should include references to relevant undisputed pleaded facts along with facts eligible to be officially noted pursuant to Rule of Practice 323,⁵ and should include, as attachments, relevant declarations, affidavits, and other supporting documentation. A brief in opposition to a motion for summary disposition should precisely specify the basis for that opposition, identify with particularity the material factual issues in dispute, and address relevant Commission precedent.⁶ Pursuant to Rule of Practice 180(c), a party's failure to file a required brief or comply with this order may result in the Commission's determination of the matter at issue against that party, entry of default, dismissal of the proceeding, or the prohibition of the introduction of evidence or the exclusion of testimony regarding the matter at issue.⁷

⁴ Attention is called to Rules of Practice 150-153, 17 C.F.R. §§ 201.150-153, with respect to form and service, and Rule of Practice 250(e), and (f), 17 C.F.R. § 201.250(e) and (f), with respect to length limitations.

⁵ 17 C.F.R. § 201.323.

⁶ See, e.g., *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 & n.68 (Dec. 12, 2013) (discussing appropriateness of summary disposition in follow-on proceedings and providing citations), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4-6 (Sept. 26, 2007) (discussing unsuccessful attempt to oppose summary disposition), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

⁷ 17 C.F.R. § 201.180(c).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁸ We also remind the parties that any document filed with the Commission must be served upon all participants in the proceeding and be accompanied by a certificate of service.⁹

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

Vanessa A. Countryman
Secretary

⁸ *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.

⁹ See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (“Papers filed with the Commission . . . shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.”).