

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 98241 / August 29, 2023

Admin. Proc. File No. 3-21344

In the Matter of  
JOHN CUCINELLA

RENEWED 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.<sup>1</sup> 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.<sup>2</sup>

On July 27, 2023, the Commission ordered Cucinella to show cause 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 otherwise to defend this proceeding.<sup>3</sup> It appears that the order to show cause may not have been served properly on Cucinella. Under the circumstances, we find it appropriate to renew our order to show cause and extend the deadline by which Cucinella must respond to the order. The prehearing conference and the hearing remain continued indefinitely.

Accordingly, Cucinella is ORDERED to SHOW CAUSE by September 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

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

<sup>2</sup> 17 C.F.R. § 201.141(a)(2)(i).

<sup>3</sup> *John Cucinella*, Exchange Act Release No. 98006, 2023 WL 4845814 (July 27, 2023).

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

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 October 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.<sup>6</sup> 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.<sup>7</sup> The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.<sup>8</sup> The failure to timely oppose a dispositive motion is itself a basis for a finding of default;<sup>9</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>10</sup>

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

<sup>5</sup> *Cucinella*, 2023 WL 2559844, at \*2.

<sup>6</sup> *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).

<sup>7</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 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).

<sup>8</sup> *See* Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

<sup>9</sup> *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).

<sup>10</sup> *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.<sup>11</sup> 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.<sup>12</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>11</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 redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.

<sup>12</sup> 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.”).