

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98314 / September 7, 2023

Admin. Proc. File No. 3-20913

In the Matter of

THE BRIAN MADISON CARNES TRUST

RENEWED ORDER TO SHOW CAUSE

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 3, 2022, the Division of Enforcement filed a status report establishing that the OIP was served on the Trust on July 6, 2022, pursuant to Commission Rule of Practice 141(a)(2)(iii).²

On August 5, 2022, the Commission issued an order directing the Trust to show cause why this proceeding should not be determined against it due to its failure to timely answer the OIP’s allegations.³ But it appears that the order to show cause may not have been properly served on the Trust. Under the circumstances, we find it appropriate to renew the order to show cause and extend the deadline by which the Trust must file a response to that order. The prehearing conference and the hearing remain continued indefinitely.

We further note that, on October 7, 2022, the Division moved for an order of default and the imposition of remedial sanctions against the Trust. Although it appears the Division properly served the motion on the Trust, the Trust did not file a response. Consequently, the Trust must also address its failure to respond to the Division’s motion when responding to this renewed show cause order.

Accordingly, the Trust is ORDERED to SHOW CAUSE by September 21, 2023, 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. The Trust’s

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

² 17 C.F.R. § 201.141(a)(2)(iii).

³ *The Brian Madison Carnes Trust*, Exchange Act Release No. 95441, 2022 WL 3138584 (Aug. 5, 2022).

submission shall address the reasons for its failure to timely file an answer, include a proposed answer to be accepted in the event the Commission does not enter a default against it, and address the substance of the Division's request for sanctions. If the Trust responds to this order to show cause, the Division may file a reply within 14 days after its service.

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.⁴ The OIP informed the Trust that a failure to file an answer could result in deeming it in default and determining the proceeding against it.⁵ The failure to timely oppose a dispositive motion is also a basis for a finding of default.⁶ Like failing to file an answer, 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.⁷

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

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.

⁴ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁵ *Carnes*, 2022 WL 2357042, at *4.

⁶ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), 201.180(c); see, e.g., *Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

⁷ See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sept. 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).

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.”).

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

Vanessa A. Countryman
Secretary