

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98373 / September 13, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6418 / September 13, 2023

Admin. Proc. File No. 3-20796

In the Matter of
SCOTT ALLEN FRIES

RENEWED ORDER TO SHOW CAUSE

On March 14, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Scott Allen Fries (“Respondent”) pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.¹ On December 13, 2022, the Division of Enforcement filed a Notice of Filing Regarding Service of Order Instituting Proceedings, which establishes that service of the OIP was made on Respondent on March 18, 2022, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.² The Division subsequently filed a motion for default and imposition of sanctions against Respondent. As of the date of this order, Respondent has not filed an answer to the OIP or a response to the Division’s motion.

On April 20, 2023, the Commission issued an order directing Respondent to show cause why this proceeding should not be determined against him. But it appears that the order to show cause may not have been properly served on Respondent. Under the circumstances, we find it appropriate to renew our order to show cause and extend the deadline by which Respondent must file a response to that order.

Accordingly, Respondent is ORDERED to SHOW CAUSE by September 27, 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, to oppose the Division’s motion for default, or to otherwise defend this proceeding. Respondent’s submission shall address the reasons for his failure to timely defend this proceeding, include a proposed answer to be accepted in the event that the Commission does not enter a default against him, and address the substance of the

¹ *Scott Allen Fries*, Exchange Act Release No. 94412, 2022 WL 770108 (Mar. 14, 2022).

² 17 C.F.R. § 201.141(a)(2)(i).

Division's request for sanctions. If Respondent files a response 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.³ The OIP informed Respondent that a failure to file an answer could result in deeming him in default and determining the proceedings against him.⁴ In addition, the failure to timely oppose a dispositive motion is itself a basis for a finding of default⁵; 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.⁶

³ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁴ *Fries*, 2022 WL 770108, at *2.

⁵ 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).

⁶ 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).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁷ Respondent must serve the Division with a copy of any document that he files with the Commission,⁸ and he must include a certificate of service with each document that he files.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.

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

Vanessa A. Countryman
Secretary

⁷ *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 new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81. And the amendments provide further requirements if a person cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices. *Id.* at 86,478–79; *see also* Rules of Practice 150(c)(1), 152(a)(1), 17 C.F.R. §§ 201.150(c)(1), 201.152(a)(1) (addressing certification of inability to serve and file documents electronically).

⁸ Rule of Practice 150(a), 17 C.F.R. § 201.150(a). The Division of Enforcement is represented by Robert M. Moye, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

⁹ Rule of Practice 151(d), 17 C.F.R. § 201.151(d). A certificate of service “stat[es] 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.” *Id.*