

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99213 / December 20, 2023

Admin. Proc. File No. 3-21467

In the Matter of

LEE COHEN

ORDER TO SHOW CAUSE

On May 25, 2023, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Lee Cohen (“Respondent”) pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On October 3, 2023, the Division of Enforcement filed a process server’s Certificate of Service, which established that the OIP was served on Respondent on September 23, 2023.²

As stated in the OIP, Respondent was required to file an answer within 20 days after service of the OIP.³ As of the date of this order, Respondent has not done so. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Respondent is ORDERED to SHOW CAUSE by January 3, 2024, why Respondent should not be deemed to be in default and why this proceeding should not be determined against Respondent due to failure to file an answer or to otherwise defend this proceeding. Respondent’s submission shall address the reasons for Respondent’s 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 Respondent.

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 Respondent that a failure to file an answer

¹ *Lee Cohen*, Exchange Act Release No. 97594, 2023 WL 3685986 (May 25, 2023).

² Rule of Practice 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i).

³ *Cohen*, 2023 WL 3685986, at *2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), 160(b), .220(b).

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

could result in deeming Respondent in default and determining the proceedings against Respondent.⁵

If Respondent files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Respondent 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 January 31, 2024. The motion for sanctions should address each statutory element of the relevant provisions of Section 15(b) of the Exchange Act.⁶ The motion should also 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.⁷

The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.⁸ Respondent's opposition should address the reasons for Respondent's failure

⁵ *Cohen*, 2023 WL 3685986, at *2.

⁶ *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”); *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (requiring explanation of “why the facts and circumstances of this case warrant the [sanctions] imposed”), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016); *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *3 (Apr. 23, 2015) (remanding for development of additional evidence to “determine whether [the respondent] was acting as a broker or dealer at the time of his misconduct”).

⁷ *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 [the respondent’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 requested from the Division). In addition, whether preclusive effect will be given to findings made in an underlying case will vary depending on the circumstances giving rise to the prior order or judgment. *See, e.g., McDuff*, 2015 WL 1873119, at *1, *3 (general jury verdict of guilty); *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at *3–4 (Feb. 4, 2010) (injunction entered following default), *appeal after remand*, Exchange Act Release No. 63720, 2011 WL 121451, at *5–8 (Jan. 14, 2011); *cf. Reginald Buddy Ringgold, III*, Advisers Act Release No. 6267, 2023 WL 2705591, at *3 (Mar. 29, 2023) (default judgment entered as sanction for litigation misconduct).

⁸ *See* Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160. 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. § 250(e) and (f), with respect to length limitations. *See also Pending Admin. Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020) (stating that “pending further order of the Commission, all reasonable requests for extensions of time will not be disfavored as stated in Rule 161” (citing 17 C.F.R. § 201.161(b)(1))).

to timely file an answer and also address the substance of the Division's motion for sanctions. The failure to timely oppose the Division's motion is itself a basis for a finding of default;⁹ it may result in the determination of particular claims, or the proceeding as a whole, against Respondent, and Respondent may be deemed to have forfeited arguments that could have been raised at that time.¹⁰

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹¹ We also remind the parties that any document filed with the Commission must also be served upon all participants in the proceeding and be accompanied by a certificate of service.¹²

⁹ 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).

¹⁰ *See, e.g., McBarron Cap. 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).

¹¹ See *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464 (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 also 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. Rules of Practice 150(c)(1) and 152(a)(1) allow a party who cannot serve or file documents electronically (due, for example, to a “lack of access to electronic transmission devices”) to serve or file paper documents upon making a certification to that effect. 17 C.F.R. §§ 201.150(c)(1), 152(a)(1).

¹² 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.”).

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