

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99893 / April 3, 2024

Admin. Proc. File No. 3-21139

In the Matter of
IRA S. VIENER, CPA

ORDER TO SHOW CAUSE

On September 22, 2022, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Ira S. Viener, CPA, pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice.¹ Viener was served with the OIP on October 14, 2022.² On December 2, 2022, the parties filed a joint statement in which Viener consented to a hearing date later than 60 days from service of the OIP.³

As stated in the OIP, Viener’s answer was required to be filed within 20 days of service of the OIP.⁴ As of the date of this order, Viener has not filed an answer. The prehearing conference and the hearing are thus continued indefinitely.

¹ *Ira S. Viener, CPA*, Exchange Act Release No. 95884, 2022 WL 4445472 (Sept. 22, 2022).

² The Division of Enforcement filed a declaration of service on October 25, 2022, stating that it had served Viener through his attorney, but it was not clear whether that attorney was still representing Viener when the OIP was served. *See Ira S. Viener, CPA*, Exchange Act Release No. 96325, 2022 WL 17039046 (Nov. 16, 2022) (asking the Division whether, on October 14, 2022, Viener’s former counsel was still representing Viener). On December 2, 2022, the Division filed a declaration establishing that service had been accomplished by serving Viener’s then current (now former) counsel.

³ *See* 15 U.S.C. § 78u-3(b) (providing respondent with a public hearing before the Commission 30-60 days after the OIP’s service, unless respondent consents to a different hearing date).

⁴ *Viener*, 2022 WL 4445472, at *8; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), 160(b), .220(b).

Accordingly, Viener is ORDERED to SHOW CAUSE by April 17, 2024, 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 and to otherwise defend this proceeding. Viener'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 without holding a public hearing.⁵ The OIP informed Viener that a failure to file an answer could result in his being deemed in default and the proceeding determined against him.⁶

If Viener files a response to this order to show cause, the Division may file a reply within 14 days after its service. If Viener 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 5/15/2024. The motion for sanctions should address each public interest factor we consider in assessing sanctions in Rule 102(e) proceedings.⁷ 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.⁸ The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.⁹ The failure to timely oppose a dispositive motion is itself a basis for a finding of default;¹⁰ it may result in the determination of particular claims, or the proceeding as a whole,

⁵ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁶ *Viener*, 2022 WL 4445472, at *8.

⁷ *See, e.g., Thomas D. Melvin, CPA*, Exchange Act Release No. 75844, 2015 WL 5172974, at *2 (Sept. 4, 2015) (noting that our sanctions analysis is “informed by our consideration of public interest factors we traditionally consider in other types of administrative proceedings,” as well as “the extent to which a sanction may have a deterrent effect”) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)).

⁸ *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).

⁹ *See* Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

¹⁰ *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).

adversely to the non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.¹¹

The parties' attention is directed to the e-filing requirements in the Commission's Rules of Practice.¹² 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.¹³

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

¹¹ 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).

¹² See Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission's website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. Parties generally must certify that they have redacted or omitted sensitive personal information requirement from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e).

¹³ See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with 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 the service, the method of service, and the mailing address or email address to which service was made, if not made in person.").