

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86718 / August 20, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33597 / August 20, 2019

Admin. Proc. File No. 3-19243

In the Matter of
FIDELITY TRANSFER SERVICES, INC.
and
RUBEN SANCHEZ

ORDER TO SHOW CAUSE

On July 10, 2019, the Commission issued an order instituting administrative and cease-and-desist proceedings (the “OIP”) pursuant to Sections 17A(c) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 against Fidelity Transfer Services, Inc. and Ruben Sanchez (“Respondents”).¹ The OIP directed Respondents to file an answer within 20 days of service.² Respondents were served with the OIP on July 11, 2019.

In compliance with the statutory provision governing cease-and-desist proceedings, the OIP specified that a “public hearing before the Commission for the purposes of taking evidence . . . shall be convened not earlier than 30 days and not later than 60 days” from service of the OIP.³ The statute also provides that “an earlier or later date” for the hearing may be “set by the Commission with the consent of any respondent so served.”⁴ On July 22, 2019, the parties were directed to file a statement regarding any agreement that they had reached about the setting of a hearing date (or that no such agreement had been reached) “as soon as practicable, but not later than the day after the prehearing conference contemplated by the OIP.”⁵ The OIP specified that the prehearing conference should be held within 14 days of service of Respondents’ answer.⁶ As

¹ Exchange Act Rel. No. 86347, 2019 WL 3035436 (July 10, 2019).

² *Id.* at *4.

³ *Id.*

⁴ 15 U.S.C. § 80b-3(k)(2).

⁵ Exchange Act Rel. No. 86427, 2019 WL 3284694 (July 22, 2019).

⁶ *Fidelity*, 2019 WL 3035436, at *4.

of the date of this order, the parties have filed no such statement, nor have Respondents filed an answer to the OIP. The prehearing conference and the hearing are thus continued indefinitely.⁷

Accordingly, Respondents are ORDERED to SHOW CAUSE by September 3, 2019, why they should not be deemed to be in default and why this proceeding should not be determined against them due to their failure to file an answer and to otherwise defend this proceeding. 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.⁸ The OIP informed Respondents that a failure to file an answer could result in their being deemed in default and the proceedings determined against them.⁹

If Respondents file a response to this order to show cause, the Division may file a reply within 14 days after its service. If Respondents do not file a response, the Division shall file a motion for default and other relief by October 3, 2019. The motion for default and other relief may be accompanied by additional evidence pertinent to the Commission's individualized assessment of whether the requested relief is appropriate and in the public interest.¹⁰ The parties may file opposition and reply briefs within the deadlines provided by the Rules of Practice.¹¹ The failure to timely oppose a dispositive motion is itself a basis for a finding of default;¹² it may result in the determination of particular claims, or the proceeding as a whole, adversely to the

⁷ See *Ahlberg v. Dep't of Health and Human Servs.*, 804 F.2d 1238, 1243 (Fed. Cir. 1986) (“The Ahlberg petitioners’ failure to make the submissions the presiding official required also may be viewed as a waiver of any right they may have had to a hearing. . . . Here the petitioners were on notice that failure to make the required submissions would result in the closing of the record and dismissing of the appeal. When, despite such notice, the petitioners failed to make any submissions, implicitly they waived any right they may have had to a hearing”).

⁸ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁹ *Fidelity*, 2019 WL 3035436, at *5.

¹⁰ 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 (D.C. Cir. 2005) (“each case must be considered on its own facts”); *Gary McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *1 (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).

¹¹ See Rules of Practice 154, 160, 17 C.F.R. §§ 201.154, .160.

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

non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.¹³

The parties are reminded that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format.

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

¹³ 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); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 n.6 (Apr. 13, 2006).