

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100063 / May 6, 2024

Admin. Proc. File No. 3-21214

In the Matter of
JOSHUA ABRAHAMS, CPA

ORDER REQUESTING ADDITIONAL MATERIALS REGARDING SUBPOENA REQUEST

On October 21, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Joshua Abrahams, CPA, pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice.¹ On June 8, 2023, the Commission issued an order, reflecting the parties’ joint stipulation to that effect, that authorized additional depositions for each party.²

On April 30, 2024, Respondent requested, pursuant to Rule of Practice 232, the issuance of a subpoena for the deposition of Harris L. Devor, an expert engaged by the Division of Enforcement.³ The requested subpoena specifies May 7, 2024, as the date of Devor’s deposition. On May 2, 2024, Respondent filed an updated request, now specifying May 15, 2024, as the date of the deposition.

Rule 233 of the Commission’s Rules of Practice provides that a deposition may be taken in proceedings under the 120-day timeframe, like this matter, “upon written notice.”⁴ The rule also states that attendance at such a deposition “*may* be ordered by subpoena issued pursuant to” Rule 232.⁵ Thus, although the “Rules of Practice provide for a procedure to *compel* attendance

¹ *Joshua Abrahams, CPA*, Exchange Act Release No. 96127, 2022 WL 13566785 (Oct. 21, 2022).

² *Joshua Abrahams, CPA*, Exchange Act Release No. 97669, 2023 WL 3931438 (June 8, 2023).

³ *See* 17 C.F.R. § 201.232.

⁴ 17 C.F.R. § 201.233(a); *see Joshua Abrahams, CPA*, 2022 WL 13566785, at *13 (“This proceeding shall be deemed to be one under the 120-day timeframe . . .”).

⁵ 17 C.F.R. § 201.233(a)(4) (emphasis added).

at a deposition,” they “do not require that a subpoena be issued for every deposition.”⁶ Where a witness has voluntarily made himself or herself available and there is no dispute between the parties over taking the deposition, written notice without a request “for issuance of a subpoena made to the Commission, or any member thereof” is sufficient.⁷

It is not clear from the requests whether a subpoena is necessary to compel the deposition of the individual in question (*e.g.*, that the Division’s expert has otherwise declined to appear).⁸ If Respondent believes that he needs to secure a subpoena, the request must be modified to account for the time needed for the Commission to consider it.⁹ In this proceeding, as in other proceedings that have been set for a hearing before the Commission, the Commission has delegated to the Office of the General Counsel authority “[t]o determine procedural requests or similar prehearing matters” and “[t]o rule upon non-dispositive, prehearing motions.”¹⁰ But the Commission has not delegated authority to the Office of the General Counsel to issue subpoenas.¹¹ Thus, it is the Commission itself that must consider and act on any requests to issue a subpoena. Given these circumstances, Respondent should request that the subpoena be issued for a date and time that will afford the Commission sufficient time to consider his request and for the deposition to be arranged should the Commission issue the requested subpoena.¹²

⁶ See *Horter Inv. Mgt., LLC*, Advisers Act Release No. 5953, 2022 WL 294321, at *1 (Jan. 31, 2022) (emphasis added).

⁷ 17 C.F.R. § 201.232(a)(1).

⁸ Respondent states that the parties agreed, for purposes of this proceeding, not to “include[] expert depositions in the agreed-upon five depositions per side only.”

⁹ *Joshua Abrahams, CPA*, Exchange Act Release No. 97961, 2023 WL 4682605 (July 21, 2023) (setting forth a similar procedure in connection with Respondent’s July 2023 requests for subpoenas); see also *Horter Inv. Mgt., LLC*, Advisers Act Release No. 5969, 2022 WL 504544, at *1 (Feb. 18, 2022).

¹⁰ See 17 C.F.R. § 200.30-14 (i)(1).

¹¹ See *id.* § 200.30-14 (i)(2).

¹² The form subpoena available on the Commission’s website includes a direction that the designated date and time ordinarily should be “at least three weeks after the date of request for the subpoena’s issuance, to provide time for the Commission to act on request.” See <https://www.sec.gov/files/subpoena-form-appear-and-testify.pdf> (last visited May 3, 2024).

If in light of the forgoing discussion, Respondent elects to withdraw the request, IT IS ORDERED that he file a statement to that effect by May 13, 2024. Otherwise, it is ORDERED that Respondent shall submit a modification of the subpoena request by the same date.

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

Vanessa A. Countryman
Secretary