

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4033/August 1, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17123

In the Matter of

CEYONIQ AG (N/K/A CEYONIQ, INC.),
MARKET DATA CONSULTANTS, INC.,
MENTERGY LTD.
(A/K/A GILAT COMMUNICATIONS LTD.),
MID-AM SYSTEMS, INC., AND
NU ENERGY INC.

ORDER

On February 17, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) pursuant to Section 12(j) of the Securities Exchange Act of 1934. This proceeding has already ended with respect to all respondents but Ceyoniq AG (n/k/a Ceyoniq, Inc.). *See Ceyoniq AG*, Initial Decision Release No. 999, 2016 SEC LEXIS 1346 (ALJ Apr. 12, 2016), *finality order*, Exchange Act Release No. 77986, 2016 SEC LEXIS 1969 (June 3, 2016).

On July 25, 2016, the Division of Enforcement filed a motion seeking leave to serve Ceyoniq AG with the OIP by publication in the *International New York Times* newspaper. The motion describes the Division's unsuccessful attempt to serve the company under the Hague Convention at its last address on file with the Commission in Bielefeld, Germany. Attached to the motion and accompanying declaration are the Division's request for service abroad of the OIP via the Hague Convention, and the German regional authority's denial of that request on June 17, 2016. The motion also represents that service by mail is prohibited by Germany in its objection to Article 10(a) of the Hague Convention, disqualifying it as a method of service permitted pursuant to Rule of Practice 141(a)(2)(iv). Motion at 7; *see* 17 C.F.R. § 201.141(a)(2)(iv). Accordingly, the Division argues that service by publication is a suitable alternative because it is not prohibited by German law and is reasonably calculated to provide Ceyoniq AG with notice of this proceeding. Motion at 5-7.

Service by publication is a useful mechanism when a foreign individual's address is unknown or a foreign defendant is intentionally evading service, as in the cases cited by the Division. *See SEC v. Tome*, 833 F.3d 1086, 1092 (2d Cir. 1987) (notice by publication appropriate where there is "deliberate avoidance and obstruction by the defendants"); *SEC v.*

Anticevic, No. 05-cv-6991, 2009 WL 361739, at *3 (S.D.N.Y. Feb. 13, 2009) (defendant believed to be residing in Germany or Croatia, but exact address unknown); *SEC v. Shehyn*, No. 04-cv-2003, 2008 WL 6150322, at *4 (S.D.N.Y. Nov. 26, 2008) (defendant's "deliberate avoidance and obstruction ma[kes] . . . service by publication" appropriate). But Ceyoniq AG's address, provided in its last filing with the Commission, is known, and there is no evidence that the company has avoided service. The Division has also not demonstrated the unavailability of other methods of service, such as personal service by agent or process server, which may be better calculated to provide notice of this proceeding.

Accordingly, the Division's motion is DENIED WITHOUT PREJUDICE. If the Division is unable to effect service on Ceyoniq AG by other means in accordance with Rule of Practice 141(a)(2)(iv), it may renew its request for service by publication.

SO ORDERED.

Cameron Elliot
Administrative Law Judge