



three consecutive weeks in Latvijas Vestnesis, which the Division represents is the official journal for legal notices in the Republic of Latvia (Latvia), and once a week for three weeks in English in the International Herald Tribune.<sup>1</sup> Smith has claimed to live at Ganibu dambis 15-13, Riga, LV-1045, Latvia. Declaration, Exhibit C. The Division notes that the Commission's Secretary sent the OIP to Smith on August 28, 2013, by International Registered Mail to that address and the U.S. Postal Service returned the package to the Commission undelivered. Brief at 2.

In Secure Capital Funding Corp., Smith was served by electronic mail and by publication of a notice in the International Herald Tribune (the Global Edition of the New York Times). Brief at 2. The District Court's Order allowing service of the first Amended Complaint by alternative means described Smith's refusal to provide contact information to the Commission and stated:

[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" such that "notice must be of such nature as reasonably to convey the required information, . . . and it must afford a reasonable time for those interested to make their appearance."

Declaration, Exhibit A at 4 (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

The Division further believes that Smith has already received the OIP by e-mail. Brief at 3 n.1.

### **Legal Conclusions**

Commission Rule of Practice 141(a)(2)(iv) authorizes service on persons in a foreign country by several means, including any method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country. I accept the Division's representation that service by publication is not prohibited by Latvian law. Brief at 4 & n.2. The evidence shows that Smith is avoiding service, the Division has made reasonable efforts to accomplish service, publication in newspapers available where Smith claims to reside is a means reasonably calculated to give him notice of this proceeding, and that publication as proposed by the Division is allowed by Commission Rule of Practice 141(a)(2)(iv).

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<sup>1</sup> As of October 15, 2013, the International Herald Tribune is no longer published under that name. It is now named The International New York Times. See Eleanor Beardsley, Readers Lament 'International Herald Tribune' Name Change, NPR (Oct. 14, 2013), <http://www.npr.org/2013/10/14/233772676/readers-lament-international-herald-tribune-name-change>.

## Order

I ORDER that the Motion is granted. The Division shall file with the Commission's Secretary an affidavit showing that something substantially similar to the language in the Notice attached as Exhibit 1 to the Motion appeared in both *Latvijas Vestnesis* and the *International New York Times* once a week for three consecutive weeks.

I POSTPONE the prehearing conference scheduled for Thursday, November 21, 2013, and ORDER a telephonic prehearing conference at 2:00 p.m. EST on Tuesday, January 21, 2014. I will hold Smith in default and grant the relief requested by the Division if there is evidence he has been served with the OIP, and he does not file an Answer, participate in the prehearing conference, or otherwise defend the proceeding. See OIP at 2; 17 C.F.R. §§ 201.155(a), .220(f), .221(f).

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Brenda P. Murray  
Chief Administrative Law Judge