

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

Administrative Proceedings Rulings  
Release No. 6167 / October 11, 2018

Administrative Proceeding  
File No. 3-18129

In the Matter of

**Brian Michael Berger**

**Order Regarding Service**

On August 22, 2017, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondent Brian Michael Berger under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. After a prior initial decision was vacated by the Commission, the proceeding was reassigned to me. The parties were provided the opportunity to propose how further proceedings should be conducted. *Brian Michael Berger*, Admin. Proc. Rulings Release No. 6001, 2018 SEC LEXIS 2419 (ALJ Sept. 18, 2018). The Division of Enforcement submitted a notice that it has been unable to contact Berger; Berger has submitted nothing.

Based on U.S. Postal Service tracking information and a domestic return receipt submitted with the Division's notice, it appears that the OIP was delivered to a federal correctional institution in Miami, Florida, on August 29, 2017. The Division's notice represents that Berger was "then housed" at that facility, but there is no evidence in the record to support that assertion. The Division also reports that it attempted to serve my September 18 order on Berger, who the Division represents is out of prison, but does not indicate that it also attempted to re-serve the OIP.

I ORDER the Division to submit a declaration by October 25, 2018, showing that the OIP was "deliver[ed] . . . to [Berger] or to an agent authorized by appointment or by law to receive such notice," 17 C.F.R.

201.141(a)(2)(i), either in August 2017 or after the Commission's order remanding this proceeding on August 22, 2018.

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James E. Grimes  
Administrative Law Judge