

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 5778 / July 15, 2021

Admin. Proc. File No. 3-19733

In the Matter of  
  
NICHOLAS J. GENOVESE

ORDER DIRECTING ADDITIONAL SUBMISSION BY RESPONDENT AND FILING OF  
PROOF OF SERVICE BY THE DIVISION OF ENFORCEMENT

On March 24, 2020, the Securities and Exchange Commission (“Commission”) issued an order instituting administrative proceedings (“OIP”) against Nicholas J. Genovese pursuant to Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> On May 27, 2020, Genovese filed a motion requesting a ninety-day extension of time to file an answer to the OIP. In the motion, Genovese explained that he was incarcerated, had limited access to a law library, and needed additional time to “do due diligence in response to the allegations made against [him] in this [a]dministrative [p]roceeding.” Genovese also submitted with his motion an “Answer in Opposition to Allegations,” which broadly denied “all allegations” contained in Section II of the OIP on the ground that they were “materially misrepresented.”<sup>2</sup>

On June 15, 2020, the Commission issued an order granting Genovese an extension of time until September 14, 2020, to file an answer to the OIP.<sup>3</sup> But as of the date of this order, Genovese has not filed an answer. Because he has not done so, it is unclear whether Genovese

---

<sup>1</sup> *Nicholas J. Genovese*, Advisers Act Release No. 5468, 2020 WL 1433033 (Mar. 24, 2020); *see* 15 U.S.C. § 80b-3(f).

<sup>2</sup> Rule 220(c) of the Commission’s Rules of Practice specifies the content of an answer, requiring that an answer shall “*specifically* admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny *each* allegation in the order instituting proceedings.” 17 C.F.R. § 201.220(c) (emphasis added).

<sup>3</sup> *Nicholas J. Genovese*, Advisers Act Release No. 5521, 2020 WL 3249832, at \*1 (June 15, 2020).

intends to rely on the previously submitted document as his answer to the OIP. Because of this lack of clarity, an additional submission from Genovese would be helpful to the Commission.<sup>4</sup>

Accordingly, it is ORDERED that by August 12, 2021, Genovese either file an answer or submit a written statement clarifying that he considers the document previously submitted to be his answer to the OIP. Genovese shall deliver any answer or written statement to the proper prison authorities no later than the due date for forwarding to the Commission's Office of Secretary.<sup>5</sup>

It is also ORDERED that in the event Genovese notifies the Commission that he intends that the document he previously submitted be construed as his answer, the requirements in the OIP to conduct a prehearing conference within fourteen days of service of the answer and to file a statement with the Office of Secretary advising the Commission of any agreements reached at said conference shall run from the date of filing of Genovese's statement.

It is further ORDERED that the Division of Enforcement provide proof that the OIP was served on Genovese pursuant to Commission Rule of Practice 141 by filing a declaration of service attaching such proof by August 12, 2021.

The parties' attention is called to the form and service requirements of the Commission's Rules of Practice, 17 C.F.R. §§ 201.150-.154. The parties' attention is also directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.<sup>6</sup>

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

Vanessa A. Countryman  
Secretary

---

<sup>4</sup> Cf. *Fred F. Liebau, Jr.*, Exchange Act Release No. 89349, 2020 WL 4058969, at \*1 (July 20, 2020) (requesting additional briefing to clarify what remedy petitioner was seeking); *Daniel Sholom Frishberg*, Advisers Act Release No. 5399, 2019 WL 4858219 (Oct. 2, 2019) (same).

<sup>5</sup> See *Houston v. Lack*, 487 U.S. 266, 266 (1988) (stating that under the federal prison mailbox rule, pro se prisoners' notices of appeal are "filed" at moment of delivery to prison authorities for forwarding to district court); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (noting that this "mailbox rule [applies] to other filings by pro se prisoners").

<sup>6</sup> *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81. And the amendments provide

---

further requirements if a person cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices. *Id.* at 86,478 & 86,479.