

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94439 / March 16, 2022

Admin. Proc. File No. 3-20325

In the Matter of

FREESEAS INC.

THIRD SUPPLEMENTAL ORDER REGARDING SERVICE

On May 21, 2021, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Proceedings (“OIP”), pursuant to Section 12(j) of the Securities Exchange Act of 1934, against respondent FreeSeas Inc. (“Respondent”).¹ As stated in the OIP, FreeSeas is an annulled Marshall Islands corporation located in Athens, Greece.

On January 5, 2022, the Commission issued an order requesting additional information regarding the effectiveness of attempted service of the OIP on Respondent in Greece.² On February 3, 2022, the Division filed a status report stating that, together with the Office of International Affairs, it was “in the process of attempting to serve [Respondent] in the Marshall Islands through the Hague Convention since the Marshall Islands objects to service by mail.”

On February 18, 2022, the Division filed an additional status report in which it stated that Respondent could be served with the OIP in the Marshall Islands because it was involuntarily dissolved less than three years ago.³ The Division also stated that when a corporation “fails to maintain a registered agent in the Republic, or whenever its registered agent cannot with reasonable diligence be found at his business address,” Marshall Islands law appoints the Attorney-General of the Marshall Islands as the registered agent for the corporation for purposes of service of process.⁴ The Division stated that, on January 25, 2022, it “shipped Hague

¹ *FreeSeas Inc.*, Exchange Act Release No. 91970, 2021 WL 2134963 (May 21, 2021).

² *FreeSeas Inc.*, Exchange Act Release No. 93908, 2022 WL 44324 (Jan. 5, 2022).

³ See Marshall Islands Business Corporations Act 1990, § 104(2) (reflecting that an annulled corporation is one that has been involuntarily dissolved), https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1990/1990-0091/BusinessCorporationsAct1990_8.pdf; *id.* § 105(1) (providing that dissolved corporations “shall nevertheless be continued for a term of three (3) years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them”).

⁴ *Id.* § 21(1).

Convention Service documents to the Attorney[-]General of the Marshall Islands,” and that, on February 17, 2022, the Division received notice that the OIP was received on February 8, 2022, as evidenced in an attached email showing delivery by FedEx.

Based on the status reports that the Division submitted, it is unclear whether service has been accomplished pursuant to Rule of Practice 141(a)(2)(iv), which applies to persons in a foreign country.⁵ Some of the Division’s statements suggest that it contends that it has made service of the OIP under the Hague Service Convention through the Attorney-General of the Marshall Islands acting as the country’s designated central authority.⁶ If so, the record does not contain evidence that the central authority has confirmed that service was made on Respondent.⁷

Other statements suggest that the Division contends that it has served the OIP on Respondent by delivering it to the Attorney-General as the statutory registered agent for Respondent following its involuntary dissolution. If so, the record does not contain evidence that such service was made “[a]s prescribed by” Marshall Islands law “for service in that country in an action in its courts of general jurisdiction.”⁸ Marshall Islands law requires that service of process on the Attorney-General as a statutory registered agent for a dissolved corporation “shall be made by personally delivering to and leaving with him or his deputy or with any person authorized by the Attorney-General to receive such service, at the office of the Attorney-General in Majuro Atoll, duplicate copies of such process together with the statutory fee.”⁹ But service was made by FedEx, rather than personally, and the record contains no indication that duplicate copies of the OIP or the statutory fee were provided to the Attorney-General.

⁵ 17 C.F.R. § 201.141(a)(2)(iv).

⁶ <https://www.hcch.net/en/states/authorities/details3/?aid=1145> (reflecting designation of the Attorney-General of the Marshall Islands as the country’s central authority under the Hague Service Convention); *see also* Rule of Practice 141(a)(2)(iv)(B), 17 C.F.R. § 201.141(a)(2)(iv)(B) (authorizing service of an OIP by “any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents”).

⁷ *See* Marshall Islands Hague Service Convention (Implementation) Act, 2020, § 106 (stating that Attorney-General will provide certificate of service following completion of service), <https://rmicourts.org/wp-content/uploads/2020/12/PL-2020-26-HAGUE-SERVICES-CONVENTION-IMPLEMENTATION-ACT2020-1.pdf>.

⁸ 17 C.F.R. § 201.141(a)(2)(iv)(C)(1).

⁹ Marshall Islands Business Corporations Act 1990, § 21(2).

Accordingly, IT IS ORDERED that the Division of Enforcement file an additional status report by April 13, 2022, specifying the legal and factual basis for concluding that service of the OIP has been accomplished or identifying the steps that the Division will take to accomplish it.

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

Vanessa A. Countryman
Secretary