

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 96806 / February 6, 2023

Admin. Proc. File No. 3-20817

In the Matter of  
  
CHARLES K. TOPPING

ORDER DENYING MOTION TO DEEM SERVICE COMPLETE AND DIRECTING THE  
FILING OF A STATUS REPORT

The Securities and Exchange Commission (“Commission”) issued an order instituting administrative proceedings (“OIP”) on April 8, 2022, pursuant to Section 15(b) of the Securities Exchange Act of 1934, against Charles K. Topping.<sup>1</sup> The Division was ordered to file status reports concerning service of the OIP.<sup>2</sup> After filing several such status reports, the Division filed a motion on January 12, 2023, seeking an order deeming service of the OIP complete and directing Topping to show cause why he should not be found in default. We deny the Division’s motion and direct it to file another status report concerning service.

The Division’s most recent status report, filed on December 15, 2022, states that Topping recently was released from prison and that the Federal Bureau of Prisons advised that Topping could be contacted by mail at a P.O. Box address at a Residential Reentry Management Office in Miami, FL. The status report further states that the Division mailed the OIP to that address by Priority Express Mail and included the U.S. Postal Service’s tracking information, which stated that the package was “Picked Up at Postal Facility” on August 24, 2022, and that “waiver of signature was exercised at the time of delivery.”

Commission Rule of Practice 141(a)(2)(i) provides that service of an OIP on an individual respondent can be accomplished by “sending a copy of the [OIP] addressed to the individual by U.S. Postal Service . . . express mail and obtaining a confirmation of receipt.”<sup>3</sup> We cannot determine whether such service was accomplished here. According to the Bureau of

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<sup>1</sup> *Charles K. Topping*, Exchange Act Release No. 94661, 2022 WL 1058706 (Apr. 8, 2022).

<sup>2</sup> *See, e.g., Charles K. Topping*, Exchange Act Release No. 96421, 2022 WL 17401535 (Dec. 1, 2022).

<sup>3</sup> 17 C.F.R. § 201.141(a)(2)(i).

Prisons’ website, the Miami Residential Reentry Management Office (“RRMO”) is a field office that administers and monitors “local Residential Reentry Centers, which are responsible for providing federal offenders with community-based services that will assist with their reentry needs.”<sup>4</sup> The Bureau of Prisons’ website further explains that the Bureau of Prisons does not house inmates at the RRMO itself, but rather at a physically separate Residential Reentry Center, typically run by a third party under contract with the Bureau of Prisons.<sup>5</sup> Topping’s receipt of the OIP thus appears to turn on the RRMO’s forwarding the OIP to the appropriate third-party facility, and then staff of that facility delivering it to Topping.

We cannot determine here whether this was done.<sup>6</sup> Without limiting or prejudging how the Division attempts to serve Topping, we note that alternative procedures may provide greater assurance that Topping will personally receive the OIP. For instance, the OIP might be sent directly to the halfway house where he resides.<sup>7</sup> Or the OIP may be sent with the designation

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<sup>4</sup> Bureau of Prisons, *Residential Reentry Management Field Offices*, available at <https://www.bop.gov/about/facilities/offices.jsp> (last visited Feb. 3, 2023); see Bureau of Prisons, *RRM Miami: A Residential Reentry Management (RRM) field office*, available at <https://www.bop.gov/locations/ccm/cmm> (last visited Feb. 3, 2023); see also Rule of Practice 323, 17 C.F.R. § 201.323 (permitting official notice of “any material fact which might be judicially noticed by a district court of the United States”); *United States v. Thornton*, 511 F.3d 1221, 1229 n.5 (9th Cir. 2008) (taking judicial notice of a Bureau of Prisons policy statement).

<sup>5</sup> Bureau of Prisons, *Residential Reentry Management Centers: Operating a RRC*, available at [https://www.bop.gov/about/facilities/residential\\_reentry\\_management\\_centers.jsp](https://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp) (last visited Feb. 3, 2023) (“The BOP contracts with residential reentry centers (RRCs), also known as halfway houses, to provide assistance to inmates who are nearing release. . . . RRC service contracts are awarded through a competitive procurement process . . . . [O]nce awarded, the contracts are administered by the community corrections field offices.”).

<sup>6</sup> We note that mailing to a RRMO’s P.O. Box is different from the more typical situation where correspondence is mailed to an inmate “care of” the facility housing him or her. When a mailing is sent to an inmate at the address of the facility that physically houses that individual, it is reasonable to assume, absent some showing to the contrary, that the institution’s staff will comply with the institution’s procedures and properly disseminate the correspondence to the inmate in the ordinary course of business. See *Dean Mustaphalli*, Exchange Act Release No. 5827, 2021 WL 3682020, at \*1 & n.3 (Aug. 19, 2021) (permitting service of an OIP upon incarcerated respondent via mailing to the prison facility housing him); cf. *Daniel B. Vazquez, Sr.*, Exchange Act Release No. 92522, 2021 WL 3210154, at \*1 & n.3 (July 29, 2021) (noting that OIP was mailed directly to respondent at his halfway house, rather than the Residential Reentry Management field office); *Daniel B. Vazquez, Sr.*, Exchange Act Release No. 93481, 2021 WL 5039669, at \*1 (Oct. 29, 2021) (finding that service had been accomplished).

<sup>7</sup> See *supra* note 6 (citing *Daniel B. Vazquez, Sr.*, 2021 WL 3210154, at \*1 & n.3).

“Special Mail—Open Only in the Presence of the Inmate,” which triggers additional procedures and safeguards.<sup>8</sup>

Accordingly, the Division’s motion for an order deeming service complete is DENIED. To assist the Office of the Secretary in maintaining a record of service that establishes that the OIP has been properly served,<sup>9</sup> IT IS ORDERED that the Division of Enforcement file a status report regarding the additional attempts to serve Topping with the OIP by March 6, 2023, and every 28 days thereafter until service is accomplished.

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<sup>8</sup> See Bureau of Prisons, *Mail Management Manual*, available at [http://www.bop.gov/policy/progstat/5800\\_016.pdf](http://www.bop.gov/policy/progstat/5800_016.pdf) (last visited Feb. 3, 2023) (setting forth “processing requirements for special . . . mail” including logs detailing receipt in the mail room and attempts to deliver the mail and directing that special mail be given priority treatment, including delivery attempts every 24 hours); Bureau of Prisons, *Program Statement: Correspondence*, available at [http://www.bop.gov/policy/progstat/5265\\_014.pdf](http://www.bop.gov/policy/progstat/5265_014.pdf) (last visited Feb. 3, 2023) (stating that for “incoming correspondence to be processed under the special mail procedures . . . the sender must be adequately identified on the envelope, and the front of the envelope must be marked ‘Special Mail — Open only in the presence of the inmate’” and explaining that staff must develop procedures for logging “the date and time of receipt, the date and time the letter is delivered to an inmate . . . and the name of the staff member who delivered the letter”). We do not hold that procedures like these are always required when mailing an OIP to an inmate, *cf. supra* note 6, only that they are sufficient here.

<sup>9</sup> See Rule of Practice 141(a)(3), 17 C.F.R. § 201.141(a)(3).

IT IS FURTHER ORDERED that the Division's motion for an order requiring Topping to show cause as to why the proceeding should not be determined against him on default is DENIED without prejudice.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.<sup>10</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>10</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 redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.