

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97509 / May 16, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4407 / May 16, 2023

Admin. Proc. File No. 3-20601

In the Matter of

CARLOS JAVIER MOCTEZUMA VELASCO

ORDER GRANTING IN PART MOTION FOR LEAVE TO USE ALTERNATE MEANS OF SERVICE

The Securities and Exchange Commission issued an order instituting proceedings (“OIP”) on September 27, 2021, pursuant to Commission Rule of Practice 102(e)(3),¹ against Carlos Javier Moctezuma Velasco (“Respondent”).² According to the OIP, Respondent was permanently enjoined from violating antifraud provisions of the federal securities laws.³ The OIP further temporarily suspended Respondent from appearing or practicing before the Commission.⁴

On January 18, 2023, the Division of Enforcement (“Division”) filed a motion for leave to serve the OIP on Respondent by alternative means. According to the motion, the Division attempted to serve Respondent—who is a citizen and resident of Mexico—by sending “sets of Hague Service Convention documents to Mexico’s Central Authority” on November 22, 2021, and April 27, 2022. Because the Division had not yet received confirmation of a service attempt by the Mexico Central Authority, the Division sought leave to serve Respondent (a) by e-mail at an e-mail address known to be used by Respondent or (b) by publication. On March 1, 2023, the Commission issued an order requesting additional briefing regarding whether service of the OIP on Respondent using e-mail would constitute a “means not prohibited by international

¹ 17 C.F.R. § 201.102(e)(3).

² *Carlos Javier Moctezuma Velasco*, Exchange Act Release No. 93135, 2021 WL 4452768 (Sept. 27, 2021).

³ *Id.* at *1; *see also SEC v. Gerardo de Nicolás, et al.*, Civil Action No. 17-CV-02086 (S.D. Cal.).

⁴ *Velasco*, 2021 WL 4452768, at *2.

agreement” under the circumstances of this case.⁵ Respondent did not file a response to the Division’s supplemental brief. Based on the additional briefing submitted by the Division, we find it appropriate to grant the Division’s motion to the extent it seeks leave to serve Respondent by e-mail.

Commission Rule of Practice 141(a)(2)(iv)(D) provides that service of an OIP on persons in a foreign country may be accomplished “[b]y any other means not prohibited by international agreement, as the Commission or hearing officer orders.”⁶ Although Mexico has lodged an objection to Article 10 of the Hague Service Convention, and thus objects to service “by postal channels,”⁷ service by e-mail is not expressly prohibited by the Convention.⁸ Thus, “according to a majority of courts,” service by e-mail is not a method of service prohibited by international agreement even where the foreign country has objected to service by mail under Article 10.⁹ We find the analysis in these cases persuasive and applicable here.¹⁰

In any case, the Hague Service Convention is inapplicable because Respondent’s address is not currently known.¹¹ The Division received notice from the Mexico Central Authority that service on Respondent could not be completed at his last known address because the residents there stated to the official attempting to serve the documents “that [Respondent] does not live there.” The Division stated that it “is not currently and does not expect to become aware of any

⁵ *Carlos Javier Moctezuma Velasco*, Exchange Act Release No. 97005, 2023 WL 2313255 (Mar. 1, 2023).

⁶ 17 C.F.R. § 201.141(a)(2)(iv)(D).

⁷ See Hague Convention Conference on Private International Law, *Mexico Declarations*, <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=412&disp=resdn> (last visited May 8, 2023); U.S. Dep’t of State: Bureau of Consular Affairs, *Mexico Judicial Assistance Information*, <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Mexico.html> (last visited May 8, 2023).

⁸ See *Bazarian Int’l Fin. Assocs., LLC v. Desarrollos Aerohotelco, C.A.*, 168 F. Supp. 3d 1, 17 (D.D.C. 2016) (stating that “a country’s objection to Article 10 does not constitute an express rejection of service by email”).

⁹ *Chanel, Inc. v. Handbagstore*, Case No. 20-cv-62121, 2021 WL 3060329, at *8–9 (S.D. Fla. June 30, 2021) (collecting cases); *Bazarian Int’l Fin.*, 168 F. Supp. 3d at 17 (same); see, e.g., *Vaswani, Inc. v. Manjunathamurthy*, Civil Action No. 2:20-cv-20288-KSH-CLW, 2021 WL 1541071, at *4 (D.N.J. Apr. 19, 2021) (“What is clear is that those courts holding objections to Article 10 do not prohibit service by email represent the majority view.”).

¹⁰ Precedent construing the service requirements under the Federal Rules of Civil Procedure, although not binding on the Commission when construing our Rules of Practice, can be persuasive authority. See *Velasco*, 2023 WL 2313255, at *1 n.9.

¹¹ Hague Service Convention art. 1 (“This Convention shall not apply where the address of the person to be served with the document is not known.”).

other potential address for Respondent.” For this reason as well, we find that service by e-mail is appropriate.

Accordingly, IT IS ORDERED that the Division’s motion is granted in part. The Division is hereby directed to serve Respondent by e-mail and file a status report concerning service of the OIP by June 13, 2023, and every 28 days thereafter until service by e-mail is accomplished. The remainder of the Division’s motion concerning its request to serve Respondent by publication is denied, without prejudice, as moot.¹²

The parties’ attention is directed to the e-filing requirements in the Rules of Practice.¹³

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

Vanessa A. Countryman
Secretary

¹² Cf. *Velasco*, 2023 WL 2313255, at *1 n.6 (deferring consideration of the Division’s request to serve Respondent by publication).

¹³ *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.