

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 97512 / May 16, 2023

ACCOUNTING AND AUDITING ENFORCEMENT  
Release No. 4409 / May 16, 2023

Admin. Proc. File No. 3-20603

In the Matter of  
RAMÓN LAFARGA BÁTIZ

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),<sup>1</sup> against Ramón Lafarga Bátiz (“Respondent”).<sup>2</sup> According to the OIP, Respondent was permanently enjoined from violating antifraud provisions of the federal securities laws.<sup>3</sup> The OIP further temporarily suspended Respondent from appearing or practicing before the Commission.<sup>4</sup>

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

<sup>1</sup> 17 C.F.R. § 201.102(e)(3).

<sup>2</sup> *Ramón Lafarga Bátiz*, Exchange Act Release No. 93137, 2021 WL 4452772 (Sept. 27, 2021).

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

<sup>4</sup> *Bátiz*, 2021 WL 4452772, at \*2.

agreement” under the circumstances of this case.<sup>5</sup> 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.”<sup>6</sup> Although Mexico has lodged an objection to Article 10 of the Hague Service Convention, and thus objects to service “by postal channels,”<sup>7</sup> service by e-mail is not expressly prohibited by the Convention.<sup>8</sup> 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.<sup>9</sup> We find the analysis in these cases persuasive and applicable here.<sup>10</sup>

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.<sup>11</sup>

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<sup>5</sup> *Ramón Lafarga Bátiz*, Exchange Act Release No. 97007, 2023 WL 2313275 (Mar. 1, 2023).

<sup>6</sup> 17 C.F.R. § 201.141(a)(2)(iv)(D).

<sup>7</sup> 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).

<sup>8</sup> 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”).

<sup>9</sup> *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.”).

<sup>10</sup> 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 *Bátiz*, 2023 WL 2313275, at \*1 n.9.

<sup>11</sup> Cf. *id.* at \*1 n.6 (deferring consideration of the Division’s request to serve Respondent by publication).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.<sup>12</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>12</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.