

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99244 / December 26, 2023

Admin. Proc. File No. 3-21220

In the Matter of
HUNG WAI “HOWARD” SHERN

ORDER GRANTING MOTION FOR ALTERNATIVE MEANS OF SERVICE

The Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) on October 26, 2022, pursuant to Section 15(b) of the Securities Exchange Act of 1934,¹ against respondent Hung Wai “Howard” Shern.² According to the OIP, Shern was permanently enjoined from violating antifraud and registration provisions of the federal securities laws and from participating in any pyramid scheme.³

On March 27, 2023, the Division of Enforcement filed a motion for leave to serve the OIP on Shern by alternative means. According to the motion, the Division attempted to serve Shern—who is a citizen and resident of Hong Kong—by mailing the OIP to Shern’s last two known addresses in Hong Kong. Because each mailing was returned unopened, the Division requests leave to serve Shern by e-mail at an address known to be used by Shern and at which a federal district court had permitted alternative service on Shern in the underlying injunctive action. The motion states that Shern used that e-mail address to communicate with the Division and the district court through at least January 2016, and the Division and the district court served Shern with pleadings and sent Shern ECF notices at that e-mail address through August 2022. The motion further states that Shern never indicated to the Division—or, to the Division’s knowledge, the district court—that he was no longer using that e-mail address. Nor has the Division ever received a bounce-back message or other indication that the e-mail address is no longer active.

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

¹ 15 U.S.C. § 78o(b).

² *Hung Wai “Howard” Shern*, Exchange Act Release No. 96157, 2022 WL 15292823 (Oct. 26, 2022).

³ *Id.* at *1; see also *SEC v. CKB168 Holdings Ltd., et al.*, Civil Action No. 13-cv-5584 (E.D.N.Y.).

agreement, as the Commission or hearing officer orders.”⁴ Service by e-mail upon Shern is not prohibited by international agreement. Indeed, even if the Hague Convention applied here,⁵ it would not prohibit e-mail service on Shern.⁶ Further, service by e-mail under the circumstances described in the Division’s motion complies with due process.⁷ Thus, we find it appropriate to grant the motion.

Accordingly, IT IS ORDERED that the Division of Enforcement may serve the OIP via e-mail upon Shern at the e-mail address it set forth for Shern in its motion and file a status report concerning service of the OIP by January 23, 2024.

⁴ 17 C.F.R. § 201.141(a)(2)(iv)(D).

⁵ See 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.”).

⁶ See *Ramon LaFarga Batiz*, Exchange Act Release No. 97512, 2023 WL 3530001 (May 16, 2023) (finding that “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”); *SEC v. Palm House Hotel, LLLP*, No. 18-cv-81038, 2018 WL 9849603, at *3 (S.D. Fla. Nov. 7, 2018) (concluding that, where a respondent’s Hong Kong address was unknown, “service by email would not violate the Hague Convention or be offensive to the law of the People’s Republic of China”). Hong Kong has not objected to Article 10 of the Hague Convention.

⁷ See, e.g., *Lexmark Int’l, Inc. v. Ink Techs. Printer Supplies, LLC*, 295 F.R.D. 259, 262 (S.D. Ohio 2013) (concluding that service by e-mail complied with due process where the plaintiff “demonstrated that it has verified that each of the email addresses at which it seeks to serve those Defendants is valid, and that communication has occurred with a representative of the respective Defendant at those email addresses”).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁸ We also remind the parties that any document filed with the Commission must be served upon all participants in the proceeding and be accompanied by a certificate of service.⁹

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

Vanessa A. Countryman
Secretary

⁸ *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.

⁹ See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (“Papers filed with the Commission ... shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.”).