

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6292 / April 25, 2023

Admin. Proc. File No. 3-20928

In the Matter of

RICHARD GEARHART

ORDER DIRECTING PREHEARING CONFERENCE

On July 7, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Richard Gearhart pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ On August 24, 2022, the Commission’s Office of the Secretary received a letter from Gearhart dated August 15, 2022, responding to certain allegations in the OIP that he stated “required clarification(s), correction(s) and/or statements of fact.” In his letter, Gearhart, who is currently incarcerated,² states that he does not have access to a computer or the internet and thus cannot serve or file documents electronically.

We construe Gearhart’s letter as an answer to the OIP. We also deem Gearhart’s letter to be a certification of his inability to serve and file electronically during the duration of this proceeding pursuant to Rules of Practice 150(c)(1) and 152(a)(1).³ Accordingly, Gearhart may serve and file documents by any of the means provided in Rules of Practice 150(d) and 152(a)(2).⁴ This includes U.S. Postal Service first class, certified, registered, or express mail delivery. Gearhart should mail any future filings both to the Division of Enforcement (for service) and to the Commission’s Office of the Secretary (for filing).⁵ Each document that he mails to the Commission must also include a certificate of service, in which Gearhart should state that he mailed the filing to the Division’s attorney in this case, the date he mailed it, what

¹ *Richard Gearhart*, Advisers Act Release No. 6064, 2022 WL 2531752 (July 7, 2022).

² The database at <https://www.bop.gov/inmateloc/> reflects that Gearhart is now housed at a different correctional facility than that identified in the OIP.

³ 17 C.F.R. §§ 201.150(c)(1), 201.152(a)(1).

⁴ *Id.* §§ 201.150(d), 201.152(a)(2).

⁵ *Id.* Documents served on the Division should be mailed to the following address: United States Securities and Exchange Commission, Chicago Regional Office, Attn: Andrew O’Brien, 175 W. Jackson Boulevard, Suite 1450, Chicago, IL 60604.

method of mail he used, and the mailing address to which he sent it.⁶ In light of his lack of internet access, Gearhart is also being provided with a copy of the Commission's Rules of Practice with this order.

The OIP directed the parties to conduct a prehearing conference within 14 days of service of the answer.⁷ But given the circumstances, including Gearhart's pro se and incarcerated status, we direct the parties to conduct a prehearing conference within 42 days of this order. As provided in the OIP, the parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference.⁸ If a prehearing conference is not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.⁹

Accordingly, it is ORDERED that by June 6, 2023, the parties shall conduct a prehearing conference and file a statement with the Office of the Secretary advising the Commission of any agreements reached at the prehearing conference. If a prehearing conference is not held, both parties shall file by June 13, 2023, a statement, jointly or separately, advising the Commission of that fact and of the efforts made to meet and confer.¹⁰

Pursuant to Rule of Practice 180(c), a party's failure to comply with this order may result in the Commission's determination of the matter at issue against that party, entry of a default,

⁶ Rule of Practice 151(d), 17 C.F.R. § 201.151(d).

⁷ *Gearhart*, 2022 WL 2531752, at *2.

⁸ *Id.*

⁹ *Id.*

¹⁰ In the event Gearhart makes such an individual filing, he shall deliver it to the proper prison authorities no later than the due date for forwarding to the Commission's Office of the Secretary. *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that, under federal prison mailbox rule, pro se prisoners' notices of appeal are "filed" at moment of delivery to prison authorities for forwarding to the district court); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (per curiam) (noting that this "mailbox rule [applies] to other filings by pro se prisoners").

dismissal of the proceeding, or the prohibition of the introduction of evidence or the exclusion of testimony regarding the matter at issue.¹¹

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

Vanessa A. Countryman
Secretary

¹¹ 17 C.F.R. § 201.180(c).