

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6349 / July 14, 2023

Admin. Proc. File No. 3-20928

In the Matter of

RICHARD GEARHART

ORDER DIRECTING FILING OF CERTIFICATES OF SERVICE

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 April 25, 2023, the Commission issued an order that construed a letter that Gearhart previously submitted to the Office of the Secretary as an answer to the OIP and directed the parties to engage in a prehearing conference.²

On June 28, 2023, the Division of Enforcement filed a Statement Concerning Prehearing Conference in which it represented that it would attempt to schedule a prehearing conference with Gearhart and would file an additional statement regarding the conference by July 26, 2023. The Division also stated that it had not received Gearhart’s letter and thus had not reviewed it.³ The Division did not include a certificate of service when filing its statement or when filing a notice of appearance one day earlier.

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

² *Richard Gearhart*, Advisers Act Release No. 6292, 2023 WL 3090039 (Apr. 25, 2023).

³ That filing is now available at <https://www.sec.gov/litigation/apdocuments/ap-3-20928.xml>.

The parties are reminded that they must serve each other with a copy of any documents that they file with the Commission,⁴ and they must include a certificate of service with each document that they file.⁵ The Division should therefore file certificates of service by July 27, 2023, to cure such deficiencies in its previously filed status report and notice of appearance.⁶ Given that Gearhart’s letter is now accessible to the Division, we will not require him to serve it on the Division at this time.

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

Vanessa A. Countryman
Secretary

⁴ Rule of Practice 150(a), 17 C.F.R. § 201.150(a); *see also Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,473 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf> (“Filing a document electronically in the eFAP system will not effectuate service upon the parties to the proceeding (including the Division of Enforcement) as required by Rule 150(a).”); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, 5 (Nov. 17, 2020), <https://www.sec.gov/efapdocs/instructions.pdf> (“Filing documents electronically using eFAP will not constitute service on Commission staff, such as the Division of Enforcement, or other participants in an administrative proceeding.”); *id.* (“It is your responsibility to serve any filings on Commission staff or other participants by email outside of eFAP.”).

⁵ Rule of Practice 151(d), 17 C.F.R. § 201.151(d). A certificate of service “stat[es] 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.” *Id.* Contact information for Division counsel is included on its filings.

⁶ *See Chelsea Oil & Gas Ltd.*, Exchange Act Release No. 92552, 2021 WL 3410761, at *1 n.3 (Aug. 3, 2021) (directing the filing of omitted certificate of service).