

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6357 / July 27, 2023

Admin. Proc. File No. 3-19733

In the Matter of

NICHOLAS J. GENOVESE

RENEWED ORDER DIRECTING RESPONSE FROM RESPONDENT

On March 24, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Nicholas J. Genovese pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ As stated in the OIP, Genovese was at that time incarcerated at the Metropolitan Detention Center in Brooklyn, New York (“MDC Brooklyn”).² On May 27, 2020, Genovese filed a motion requesting a ninety-day extension of time to file an answer to the OIP, but also submitted an “Answer in Opposition to Allegations,” which “den[ie]d all the allegations contained in Section II” of the OIP as “materially misrepresented.” Because Genovese specifically had sought an extension of time, the Commission issued an order on June 15, 2020, granting Genovese until September 14, 2020, to file an answer to the OIP.³ Genovese did not respond to the June 2020 order.

On July 15, 2021, the Commission issued an additional order requiring that, by August 12, 2021, Genovese file an answer to the OIP or clarify that the document he previously filed with his motion was his answer.⁴ Genovese did not respond to the July 2021 order.

On April 19, 2023, the Commission issued an order requiring Genovese, by June 8, 2023, to file an answer or a statement addressing his earlier filing.⁵ In the order, the Commission

¹ *Nicholas J. Genovese*, Advisers Act Release No. 5468, 2020 WL 1433033 (Mar. 24, 2020); *see* 15 U.S.C. § 80b-3(f).

² *Genovese*, 2020 WL 1433033, at *1.

³ *Nicholas J. Genovese*, Advisers Act Release No. 5521, 2020 WL 3249832, at *1 (June 15, 2020).

⁴ *Nicholas J. Genovese*, Advisers Act Release No. 5778, 2021 WL 2987125, at *1 (July 15, 2021).

⁵ *Nicholas J. Genovese*, Advisers Act Release No. 6289, 2023 WL 3017563, at *1 (Apr. 19, 2023).

stated that it appeared that Genovese no longer resided at MDC Brooklyn and may not have received one or more of the orders that the Commission had previously issued in this case.⁶ Genovese did not respond to the April 2023 order. It appears, however, that Genovese now resides at a new federal correctional institution and did not receive a copy of the Commission's April 2023 order.⁷

Accordingly, IT IS ORDERED that Genovese, by September 14, 2023, either file an answer to the OIP's allegations (as he previously requested additional time to do) or file a statement in which he confirms that he intends his previously filed "Answer in Opposition to Allegations" to be his answer to the OIP's allegations. In the event that he is unable to file a response through the Commission's electronic filing system, Genovese shall deliver his response to this order to the proper prison authorities no later than the above due date, for forwarding to the Commission's Office of the Secretary.⁸

Pursuant to Rule of Practice 180(c), Genovese's failure to make a filing in response to this order may result in the Commission's determination of the matter at issue against him, a finding of waiver, or such other sanction as the Commission finds appropriate.⁹

⁶ *See id.*

⁷ *See* Federal Bureau of Prisons Inmate Locator, <https://www.bop.gov/inmateloc/> (search results for Nicholas J. Genovese). Official notice is taken of the information provided by this website pursuant to Rule of Practice 323. 17 C.F.R. § 201.323; *cf. United States v. Muskett*, 970 F.3d 1233, 1237 n.4 (10th Cir. 2020) (taking judicial notice of defendant's release date).

⁸ *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").

⁹ 17 C.F.R. § 201.180(c).

The parties' attention is directed to the e-filing requirements in the Rules of Practice,¹⁰ which were adopted after this proceeding was instituted.¹¹ 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.¹²

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

Vanessa A. Countryman
Secretary

¹⁰ *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 new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81. And the amendments provide further requirements if a person cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices. *Id.* at 86,478-79; Rules of Practice 150(c)(1), 152(a)(1), 17 C.F.R. §§ 201.150(c)(1), .152(a)(1) (addressing, respectively, certification of inability to serve and file documents electronically).

¹¹ With this order, Genovese is being provided with copies of guidance documents from the Office of the Secretary, a copy of the Commission's Rules of Practice, and a copy of the OIP.

¹² *See also* 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."). The Division of Enforcement is represented by Alexander M. Vasilescu (vasilescua@sec.gov) in this proceeding. His mailing address is New York Regional Office, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616.