

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99420 / January 24, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6534 / January 24, 2024

Admin. Proc. File No. 3-20823

In the Matter of

LYNN D. CAWTHORNE

ORDER REGARDING SERVICE

On April 15, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings against Lynn D. Cawthorne pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.¹ On July 25, 2022, the Division of Enforcement filed a status report regarding service of the OIP, which appended a process server's affidavit stating that the process server had personally served the OIP on the officer in charge at the prison where Cawthorne was incarcerated but did not serve Cawthorne personally.

On December 22, 2023, the Commission issued an order asking the Division to file additional proof of service clarifying whether the officer in charge at the prison was authorized to accept service of process of the OIP on behalf of Cawthorne.² On January 3, 2024, the Division filed its additional proof of service of the OIP, which appended several communications between Division staff and the process serving contractor, and between Division staff and staff at the federal prison where Cawthorne was incarcerated in July 2022. The Division's communication with the process server states that the prison where Cawthorne was incarcerated authorizes service only by the county sheriff's office, that the process server accordingly made arrangements for a deputy sheriff to serve the OIP on Cawthorne, and that the telephone notes of the process server's CCO from a conversation with the deputy sheriff noted that the deputy sheriff had handed the OIP to a prison officer who "gave to [Cawthorne]." The Division's communication with prison staff includes an email from the prison's Case Manager Coordinator

¹ *Lynn D. Cawthorne*, Exchange Act Release No. 94734, 2022 WL 1127102 (Apr. 15, 2022).

² *Lynn D. Cawthorne*, Exchange Act Release No. 99236, 2023 WL 8877632 (Dec. 22, 2023).

stating that the prison officer who received the OIP “is authorized to accept service on behalf of inmates.” Under the circumstances, we find that the Division has established that service of the OIP was made on Cawthorne on July 13, 2022, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.³

According to the Division’s communication with prison staff, however, the Division now “know[s] that inmate Cawthorne is no longer in [the] facility.” Notwithstanding that the Division served the OIP on Cawthorne while he was incarcerated, and in light of the absence of an affidavit from the prison officer stating that he had handed the OIP to Cawthorne, out of an abundance of caution, we believe it is appropriate for the Division to also deliver a copy of the OIP to Cawthorne at his current address in a manner consistent with Rule of Practice 141(a)(2)(i). Accordingly, it is ORDERED that the Division file a status report concerning its delivery of the OIP to Cawthorne by February 7, 2024, and every 28 days thereafter until delivery is accomplished.

As stated in the OIP, Cawthorne’s answer was required to be filed within 20 days of service of the OIP.⁴ Under the circumstances, it appears that an extension of time to answer the OIP would be appropriate, but we will postpone setting a new deadline for Cawthorne to respond to the OIP until the Division establishes delivery of the OIP to Cawthorne at his current address, at which point his time to answer the OIP will begin to run.

³ 17 C.F.R. § 201.141(a)(2)(i). *See, e.g., Robert Charles High, II*, Exchange Act Release No. 96462, 2022 WL 17503879, at *1 (Dec. 7, 2022) (finding that service of OIP was made on incarcerated respondent by service on prison official where such practice was consistent with prison’s standard operating procedure).

⁴ *Cawthorne*, 2022 WL 1127102, at *2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁵ 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.⁶

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

Vanessa A. Countryman
Secretary

⁵ 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.

⁶ 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.").