

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99442 / January 29, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6538 / January 29, 2024

Admin. Proc. File No. 3-21152

In the Matter of JOSE LUIS CASERO SANCHEZ
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ORDER DEEMING SERVICE EFFECTIVE AND DIRECTING RESPONDENT TO FILE ANSWER

On September 23, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Jose Luis Casero Sanchez (“Respondent”) pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.¹ In response to an order regarding service, the Division of Enforcement filed a number of status reports regarding service of the OIP on Respondent.

According to the Division, it initially attempted to serve Respondent through the Central Authority designated by Spain under the Hague Service Convention. But a neighbor told a process server in Spain that Respondent moved abroad. The Division also attempted to reach Respondent via email. Respondent eventually responded via email to Division counsel on November 11, 2023. The Division accordingly sent the OIP to this email address on November 15, 2023.² Additional email communications between the Division and Respondent followed, including a December 4, 2023 email in which Respondent stated that he has “no current address as I am a nomad” and “all the communication will need to be sent via email” and a December 21, 2023 email in which Respondent stated: “I consent being served via email.”

We construe Respondent’s December 21, 2023 email to be a “waiver of service,” such that, in lieu of service, Respondent “may be provided a copy of the order instituting proceedings by first class mail or other reliable means.”³ Here, email is a reliable means because Respondent

¹ *Jose Luis Casero Sanchez*, Exchange Act Release No. 95906, 2022 WL 4445492 (Sept. 23, 2022).

² The Division also emailed Respondent other documents filed or issued in this proceeding.

³ Rule of Practice 141(a)(4), 17 C.F.R. § 201.141(a)(4).

has expressly consented to service by email, and he has shown that he can access the particular email address used by the Division here.

In the alternative, we order that the OIP may be served on Respondent by email pursuant to Rule of Practice 141(a)(2)(iv)(D).⁴ Under this rule, an OIP may be served on a “person in a foreign country . . . [b]y any other means not prohibited by international agreement, as the Commission . . . orders.”⁵ We find that service by email upon Respondent is not prohibited by international agreement. The Hague Service Convention does not apply because Respondent has no known address.⁶ But even if the Hague Service Convention did apply, it would not prohibit email service on an individual located in Spain.⁷ Further, service by email complies with due process here, as again Respondent has demonstrated that he has access to the particular email address at issue.⁸

We also direct the Office of the Secretary to send the OIP to Respondent via email at the same time it serves this order on him via email.⁹

Accordingly, we find that the OIP may be served on Respondent via email. It is ORDERED that Respondent shall file an answer to the OIP by February 20, 2024.

⁴ 17 C.F.R. § 201.141(a)(2)(iv)(D).

⁵ *Id.* Respondent has not represented that he now resides in the United States.

⁶ Hague Service Convention art. 1, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=17> (“This Convention shall not apply where the address of the person to be served with the document is not known.”).

⁷ *See Lexmark Int’l, Inc. v. Ink Techs. Printer Supplies, LLC*, No. 1:10-CV-564, 2013 WL 12178588, at *4 (S.D. Ohio Aug. 21, 2013) (finding that Hague Service Convention does not prohibit email service to defendant in Spain and noting that Spain has not “objected to the use of postal channels for service of process as provided for under Article 10”); *see also Ramón Lafarga Bátiz*, Exchange Act Release No. 97512, 2023 WL 3530001, at *1 (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” of the Hague Service Convention).

⁸ *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 email 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”).

⁹ Thus, we need not decide whether our rules permit retroactive waiver of service of the OIP or retroactive approval of an alternative means of service. *Cf. Freedom Watch, Inc. v. OPEC*, 766 F.3d 74, 83 (D.C. Cir. 2014) (“Courts disagree on whether alternative means of service undertaken without court order may be authorized retroactively under [Federal Rule of Civil Procedure] 4(f)(3).”).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹⁰ And we remind the parties that any document filed with the Commission must also be served upon all participants in this proceeding and be accompanied by a certificate of service.¹¹

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

Vanessa A. Countryman
Secretary

¹⁰ See Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission's website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. Parties generally also must certify that they have redacted or omitted sensitive personal information from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e).

¹¹ See Rule of Practice 150, 17 C.F.R. § 201.150 (requiring parties generally 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.").