

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91513 / April 8, 2021

Admin. Proc. File No. 3-19505

In the Matter of

RARAN CORPORATION,
REFCO PUBLIC COMMODITY POOL, L.P., AND
RENT USA, INC.

SECOND SUPPLEMENTAL ORDER REGARDING SERVICE AS TO REFCO PUBLIC
COMMODITY POOL, L.P.

The Securities and Exchange Commission (“Commission”) issued an Order Instituting Proceedings (“OIP”) on September 24, 2019, pursuant to Section 12(j) of the Securities Exchange Act of 1934, against respondents RARAN Corporation, Refco Public Commodity Pool, L.P., and Rent USA, Inc.¹

On December 11, 2020, the Commission issued an Order to Show Cause as to RARAN and Rent USA.² This order also directed the Division of Enforcement to attempt service on Refco at the address listed on its July 6, 2010 Schedule 14D-9, and to file a declaration demonstrating this attempted service.³ On March 18, 2021, the Division filed a declaration of a Division attorney stating that the OIP was sent to this address via UPS. However, the Commission’s Rules of Practice do not authorize service of an OIP by sending it through a commercial courier, such as UPS; the Rules of Practice authorize an OIP to be sent “by U.S. Postal Service certified, registered, or express mail” and provide that a confirmation must be obtained.⁴ Consequently, the Division has not yet served the OIP on Refco successfully because its attempted service did not comply with the Rules of Practice.

¹ *RARAN Corp.*, Exchange Act Release No. 87082, 2019 WL 4640455 (Sept. 24, 2019).

² *RARAN Corp.*, Exchange Act Release No. 90647, 2020 WL 7319122 (Dec. 11, 2020).

³ *Id.* at *1 n.3; *see also RARAN Corp.*, Exchange Act Release No. 91311, 2021 WL 950029 (Mar. 12, 2021); *RARAN Corp.*, Exchange Act Release No. 91168, 2021 WL 666507 (Feb. 19, 2021).

⁴ Rule of Practice 141(a)(2)(i)-(ii), 17 C.F.R. § 201.141(a)(2)(i)-(ii); *Gary Edward Haynes*, Advisers Act Release No. 5692, 2021 WL 763945, at *1 (Feb. 26, 2021); *cf.* Rule of Practice

On March 30, 2021, a Division attorney forwarded to apfilings@sec.gov a March 23, 2021 email from Russell C. Silberglied of Richards, Layton & Finger, P.A. Refco's most recent filing with the Commission listed the address of its court-appointed liquidating trustee, care of Richards, Layton & Finger, P.A., with attention to Russell C. Silberglied.⁵ The email that the Division attorney forwarded seems to indicate that Refco's counsel received the OIP and that Refco does not plan to file an answer in this proceeding.⁶ But the Division does not argue that the email standing alone constitutes a waiver of service of the OIP by Refco under Rule of Practice 141(a)(4).⁷ And the Rules of Practice do not provide that actual notice cures defective service of an OIP or that forwarding Silberglied's March 23rd email cured the service defect identified above.⁸

It further appears that, in forwarding the March 23rd email as it did, the Division did not comply with Rule of Practice 150,⁹ which requires that parties serve papers on each other, as well as Rule 151(d),¹⁰ which requires that papers filed with the Commission be accompanied by

141(b), 17 C.F.R. § 201.141(b) (providing that orders other than an order instituting proceedings may be served by any method of service authorized under Rule of Practice 150(c) and (d)); Rule of Practice 150(d)(3), 17 C.F.R. § 201.150(d)(3) (authorizing service by sending papers through a commercial courier service or express delivery service).

⁵ See Rule of Practice 323, 17 C.F.R. § 201.323 (permitting the Commission to take official notice of "any matter in the public official records of the Commission").

⁶ The Division attorney forwarded Silberglied's email with the notation: "See below." Silberglied's forwarded email stated, in relevant part:

Refco will not be filing an answer to the Order Instituting Proceedings and has no objection to the revocation of the registration of its securities.

By way of further explanation, Refco has not been engaged in any activity other than winding up its affairs and collecting and returning money to its investors for a number of years. To that end, when Refco did not have any remaining managers or directors, it filed a proceeding in the Delaware Court of Chancery in October 2006 to appoint a liquidating trustee. Thereafter, Refco filed a Chapter 11 bankruptcy petition in May 2014 and confirmed a plan in September 2014. The purpose of the plan was to facilitate distributing remaining funds to investors. Refco did so, making its final distribution in December 2017 (after earlier interim distributions). The bankruptcy case was closed, and a final decree was entered, in February 2017. Thus, Refco has no remaining assets or business and, essentially, its corporate life has ended.

⁷ 17 C.F.R. § 201.141(a)(4).

⁸ See Rule of Practice 141(a)(2)(i)-(ii), 17 C.F.R. § 201.141(a)(2)(i)-(ii).

⁹ 17 C.F.R. § 201.150.

¹⁰ 17 C.F.R. § 201.151(d).

a certificate of service. The Division should not send communications to the apfilings@sec.gov email account without serving the communications on the other parties.¹¹

Accordingly, it is ORDERED that the Division file a status report concerning service of the OIP on Refco by April 22, 2021, and every 28 days thereafter until service is accomplished.

The parties' attention is called to the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that pending further order of the Commission parties to the extent possible shall submit all filings electronically at apfilings@sec.gov.¹² Also, the

¹¹ Cf. *Green Ballast, Inc.*, Exchange Act Release No. 87197, 2019 WL 4858216, at *1 (Oct. 2, 2019) (“Communications sent or forwarded to the APFilings@sec.gov email account, but not served on the other parties, may be deemed prohibited ex parte communications.”). Our rules define an ex parte communication as “an oral or written communication not on the public record” where copies are not contemporaneously served on other parties consistent with Rule of Practice 150. 17 C.F.R. § 200.111(d)(1). However, our rules only expressly prohibit ex parte communications by “interested person[s] outside the agency.” *Id.* § 200.111(a). Our rules nonetheless provide that a “decisional employee . . . who receives . . . a communication which he or she concludes should, in fairness, be brought to the attention of all participants to the proceeding, shall transmit [it] to the Commission’s Secretary, who shall place [it] on the public record of the proceeding” and “send copies of the communication to all participants to the proceeding.” *Id.* § 200.112(a)-(b). By acknowledging the transmittal of the March 23rd email, and the email’s contents, this order discharges the duties of the Office of the General Counsel to disclose the Division’s communication under this rule. *See id.*

¹² *Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.

Commission's Rules of Practice were recently amended to include new e-filing requirements, which take effect on April 12, 2021.¹³

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

Vanessa A. Countryman
Secretary

¹³ *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020); *see also* *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments also impose other obligations on parties to administrative proceedings 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.