

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97005 / March 1, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4382 / March 1, 2023

Admin. Proc. File No. 3-20601

In the Matter of

CARLOS JAVIER MOCTEZUMA VELASCO

ORDER REGARDING SERVICE

The Securities and Exchange Commission (“Commission”) issued an order instituting proceedings (“OIP”) on September 27, 2021, pursuant to Commission Rule of Practice 102(e)(3),¹ against Carlos Javier Moctezuma Velasco (“Respondent”).² According to the OIP, Respondent was permanently enjoined from violating antifraud provisions of the federal securities laws.³ The OIP further temporarily suspended Respondent from appearing or practicing before the Commission.⁴ On January 18, 2023, the Division of Enforcement (“Division”) filed a motion for leave to serve the OIP on Respondent by alternative means. We believe that resolution of that motion would be assisted by additional briefing.

¹ 17 C.F.R. § 201.102(e)(3).

² *Carlos Javier Moctezuma Velasco*, Exchange Act Release No. 93135, 2021 WL 4452768 (Sept. 27, 2021).

³ *Id.* at *1; *see also SEC v. Gerardo de Nicolás, et al.*, Civil Action No. 17-CV-02086 (S.D. Cal.).

⁴ *Velasco*, 2021 WL 4452768, at *2.

According to the Division’s motion, Respondent is a citizen and resident of Mexico, and his last known address is in Mexico. The Division therefore attempted to serve Respondent by sending “sets of Hague Service Convention documents to Mexico’s Central Authority” on November 22, 2021, and April 27, 2022, “to effect process on Respondent at his last known address.”⁵ Because the Division has not yet received confirmation of a service attempt by the Mexico Central Authority, the Division now seeks leave to serve Respondent by e-mail at an e-mail address known to be used by Respondent.⁶

Commission Rule of Practice 141(a)(2)(iv)(D) provides that service of an OIP on persons in a foreign country may be accomplished “[b]y any other means not prohibited by international agreement, as the Commission or hearing officer orders.”⁷ Mexico, however, has lodged an objection Article 10 of the Hague Service Convention, and thus objects to service “by postal channels.”⁸ There is a split in authority in the federal courts as to whether a foreign country’s objection to service by mail under Article 10 also precludes service by e-mail.⁹ And the case relied upon by the Division for the proposition that service by e-mail is appropriate here, *RPost Holdings, Inc. v. Kagan*, is not on point.¹⁰ The Hague Service Convention was inapplicable in

⁵ See Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 (“Hague Service Convention”).

⁶ The Division’s motion also seeks leave to serve Respondent by publication, but we find it appropriate to defer consideration of that request given the uncertainty, at this juncture, as to whether other methods of service are more likely to provide Respondent with actual notice of this proceeding. *Cf. United Fin. Cas. Co. v. R.U.R. Transp., Inc.*, Case No. 22cv333-LL-WVG, 2022 WL 16747283, at *4–5 (S.D. Cal. Nov. 7, 2022) (noting that “a wide variety of alternative methods of service” exist in concluding that the plaintiff had not demonstrated that “service by publication is reasonably calculated, under all the circumstances,” to provide notice to the defendant).

⁷ 17 C.F.R. § 201.141(a)(2)(iv)(D).

⁸ See Hague Convention Conference on Private International Law, *Mexico Declarations*, <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=412&disp=resdn> (last visited Feb. 27, 2023); U.S. Dep’t of State: Bureau of Consular Affairs, *Mexico Judicial Assistance Information*, <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Mexico.html> (last visited Feb. 27, 2023).

⁹ See, e.g., *UOP LLC v. Industria del Hierro SA de CV*, Case No. 2:22-cv-01089, 2022 WL 2056363, at *2–3 (W.D. La. June 7, 2022) (collecting cases); *Chanel, Inc. v. Handbagstore*, Case No. 20-cv-62121, 2021 WL 3060329, at *8–9 (S.D. Fla. June 30, 2021) (same). Precedent construing the Federal Rules of Civil Procedure can be persuasive authority, but that precedent does not bind us when construing our Rules of Practice. See *Healthway Shopping Network*, Exchange Act Release No. 89374, 2020 WL 4207666, at *2 & n.9 (July 22, 2020).

¹⁰ *RPost Holdings, Inc. v. Kagan*, Case No. 2:11-cv-238-JRG, 2012 WL 194388, *2 (E.D. Tex. Jan. 23, 2012).

that case because the address of the defendant was unknown.¹¹ Here, the Division is aware of Respondent's last known address. And although in the underlying injunctive action the federal district court permitted service via e-mail on certain defendants' United States-based counsel, that situation, too, did not implicate the Hague Service Convention because the complaint in question was not "transmitted for service abroad."¹² In any event, Respondent is not currently represented by counsel in this proceeding.

Thus, the Commission would benefit from additional briefing to determine whether service of the OIP on Respondent using e-mail would constitute a "means not prohibited by international agreement" under the circumstances of this case—that is, e-mail to a foreign defendant with a known address in a foreign country that has objected to service by postal channels under the Hague Service Convention.¹³ Accordingly, IT IS ORDERED that the Division file a brief by March 29, 2023, addressing the above issues, and any other matters the Division may deem pertinent. Respondent may file a response by April 26, 2023.

Under the circumstances, the Division may also wish to continue to pursue its service efforts with the Mexico Central Authority. It is therefore further ORDERED that the Division file a status report regarding its attempts to serve Respondent with the OIP via the Mexico Central Authority by May 30, 2023, and every 90 days thereafter until service is accomplished.

¹¹ Hague Service Convention art. 1 ("This Convention shall not apply where the address of the person to be served with the document is not known.").

¹² *Volkswagen Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 701 (1988).

¹³ In identifying and discussing relevant legal authority, the Division may wish to consider the venue provision of the Exchange Act's judicial review provision in determining what authority is most likely to be persuasive. *See* Exchange Act Section 25(a)(1), 15 U.S.C. § 78y(a)(1) (contemplating that a respondent who neither resides in nor has a place of business in the United States can seek judicial review of a Commission final order in the U.S. Court of Appeals for the D.C. Circuit).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹⁴

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

Vanessa A. Countryman
Secretary

¹⁴ *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.