

telegraphic notice, or a waiver obtain pursuant to paragraph (a)(4) of this rule.

(3) *Certificate of Service.* The Secretary shall place in the record of the proceeding a certificate of service identifying the party given notice, the method of service, the date of service, the address to which service was made and the person who made service. If service is made in person, the certificate shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified, registered or Express Mail, the certificate shall be accompanied by a confirmation of receipt or of attempted delivery, as required. If service is made to an agent authorized by appointment to receive service, the certificate shall be accompanied by evidence of the appointment.

(4) *Waiver of Service.* In lieu of service as set forth in paragraph (a)(2) of this rule, the party may be provided a copy of the order instituting proceedings by first-class mail or other reliable means if a waiver of service is obtained from the party and placed in the record.

(b) *Service of Orders or Decisions Other Than an Order Instituting Proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this rule or Rule 150(c). Service of orders or decisions by the Commission, including those entered pursuant to delegated authority, shall be made by the Secretary or, as authorized by the Secretary, by a member of an interested division. Service of orders or decisions issued by a hearing officer shall be made by the Secretary or the hearing officer.

*Comment (a):* The Rule is derived, in part, from Rules 4 and 5(b) of the Federal Rules of Civil Procedure. The Rule is also based, in part, on Section 40(a) of the Investment Company Act, 15 U.S.C. 80a-39(a), and Section 211(c) of the Investment Advisers Act, 15 U.S.C. 80b-11(c), which set forth acceptable methods for service of orders instituting proceedings under those Acts, and on Sections 8 and 10 of the Securities Act of 1933, 15 U.S.C. 77h and 77j, and Sections 305 and 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee and 77ggg, which set forth acceptable methods of service for orders instituting stop order proceedings pursuant to those statutory sections.

The Commission commences proceedings to enforce the Federal securities laws by issuing an "order instituting proceedings." The Commission is required to give each

party appropriate notice of an order instituting proceedings. See Rule 200 (setting forth requirements in connection with the issuance of such orders). While service of the order instituting proceedings satisfies notice requirements, it is not the exclusive means of providing notice sufficient to meet the requirements of due process. In some circumstances—for example, where emergency or expedited relief is sought—actual notice of the institution of a proceeding may be made by telephone. See, e.g., Rule 511. Although formal service of the order is still required in such circumstances, action on an application for emergency or expedited relief may precede service of the order.

Rule 141(a)(2) allows service by those means specifically mentioned by statute. Rule 141 also allows service to be made by U.S. Postal Service Express Mail which, like certified or registered mail, both traditionally relied upon under the former rule, is a U.S. Post Office service that provides each letter a unique identification number, is traceable, and allows for a receipt upon delivery. Under Rule 141, alternative methods of service to persons located in the United States, such as service by publication, are not permitted. A party may, however, waive service and receive notice by accepting a copy of an order instituting proceedings by facsimile transmission, U.S. Mail, private overnight courier, or other means. Whatever method of service is used, Rule 141 requires a certificate of service establishing how notice was given, or a written waiver of service.

The Rule establishes specific criteria for service of orders upon persons registered with the Commission and upon persons in a foreign country. A person who is currently registered with the Commission to engage in the securities business with the public may reasonably be expected to receive mail sent to the address shown on their registration form or to make appropriate arrangements for such mail to be forwarded or delivered. Rule 141 provides that a person currently registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent may be served by sending a copy of the order to the last business address shown on their registration form by U.S. Postal Service certified, registered or Express Mail and that confirmation of attempted delivery to that address is sufficient for valid service if no confirmation of receipt can be obtained.

A person in a foreign country may be served by any method of service, reasonably calculated to give notice, that is not prohibited by the law of the foreign country.

*Comment (b):* Service of an order instituting proceedings places a party on notice that there will be subsequent filings or other papers. Unless a party defaults, a party's response to receipt of an order instituting proceedings must include the filing of a notice of appearance. Cf. Rule 155 (governing defaults). The notice will provide an address of record where the party can be served with subsequent orders. Therefore, a return receipt or other confirmation of delivery is not required for subsequent orders.

Subject to statutory limitations governing particular types of orders, orders other than an order instituting proceedings may be served pursuant to any method provided for in Rule 141(a) or in Rule 150(c), which governs service of papers filed by parties. The Commission may serve an order on a party, as well as on the party's counsel. It is the Commission's practice to send orders instituting proceedings and final orders to each party in addition to serving counsel, if any. Cf. Rule 150(b) (if a party is represented by counsel, counsel shall be served with papers filed by other parties with the Commission).

*Revision Comment (a):* The Rule has been revised to permit a waiver of formal service and thereby allow the use of methods of service, such as private courier service or facsimile transmission, in circumstances where such methods might otherwise be inconsistent with statutory requirements.

The Rule has been revised to include a provision specifically addressing service by the Commission on a person in a foreign country. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents does not apply to the service of Commission orders.

The rule has also been revised to include a specific provision for service on persons registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent.

#### Rule 150. Service of Papers by Parties

(a) *When Required.* In every proceeding as defined in Rule 101(a), each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the