ADMINISTRATIVE PROCEEDING
FILE NO. 3-13304

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
February 5, 2009

In the Matter of	:	
	:	ORDER DENYING MOTIONS
CENTREINVEST, INC.,	:	FOR RECONSIDERATION
OOO CENTREINVEST SECURITIES,	:	
VLADIMIR CHEKHOLKO,	:	
WILLIAM HERLYN,	:	
DAN RAPOPORT, AND	:	
SVYATOSLAV YENIN	:	

The Securities and Exchange Commission issued its Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (OIP) on December 8, 2008. On December 16, 2008, the Division of Enforcement (Division) filed its Motion to Serve Respondents OOO CentreInvest Securities (CI-Moscow), Dan Rapoport (Rapoport), and Svyatoslav Yenin (Yenin) (collectively, Foreign Respondents) by Service on U.S. Counsel (Motion). By Order dated December 31, 2008 (Order Directing Service), I granted the Division's Motion to serve the Foreign Respondents by serving their U.S. counsel. I held a telephonic prehearing conference on Friday, January 9, 2009, to discuss service of the OIP with counsel for the Division, along with Richard Brodsky, Esq. (Brodsky), counsel for CI-Moscow, and Richard Kraut, Esq. (Kraut), counsel for Rapoport and Yenin. Thereafter, by Order dated January 14, 2009 (Order Following Prehearing Conference), I ordered that the Foreign Respondents be given an additional opportunity to respond to the Division's Motion as I did not receive a response from the Foreign Respondents until after the Order Directing Service was issued due to delays in the mail.[1] The Order Following Prehearing Conference permitted Rapoport and Yenin to supplement their Opposition and CI-Moscow to submit a response to the Motion by January 23, 2009.

On January 23, 2009, I received a motion from Brodsky titled Limited Appearance of OOO CentreInvest Securities for the Sole Purpose of Moving for Reconsideration of the Order Directing Service as to Foreign Respondents (Motion for Reconsideration). On January 27, 2009, I received a memorandum from Kraut titled Respondents Rapoport and Yenin's

[1] I received an opposition to the Motion from Rapoport and Yenin (Opposition), as well as the Division's Reply, on January 5, 2009. The Division did not receive the Order Directing Service prior to mailing its Reply. On January 7, 2009, I received a letter from Brodsky on behalf of CI-Moscow asking for additional time to respond to the Motion.

Supplemental Memorandum in Opposition to Division of Enforcement's Motion to Serve Respondents OOO CentreInvest Securities, Dan Rapoport and Svyatoslav Yenin by Service on U.S. Counsel, and Cross-Motion to Vacate or, Alternatively, Reconsider Order of December 31, 2008, and Deny Division's Motion (Supplemental Memorandum). The Division submitted its opposition to the Motion to Reconsider and the Supplemental Memorandum on January 30, 2009 (Division's Opposition).[2]

CI-Moscow has moved for reconsideration of the Order Directing Service. CI-Moscow notes, "The Division has failed to establish that it is impossible to serve [CI-Moscow] in the Russian Federation." (CI-Moscow Rec. at 3.) CI-Moscow contends that the Division should be required to show that it is impossible to serve CI-Moscow under Russian law. (CI-Moscow Rec. at 7-8.) In support of its assertions, CI-Moscow observes that the Vienna Convention on Consular Relations as well as a 1935 agreement between the former Soviet Union and the United States concerning the execution of letters rogatory and the exchange of notes provides a possible means for service of the OIP on CI-Moscow. (CI-Moscow Rec. at 4-5.) Reference is made to a seminar pursuant to the Hague Conference on Private International Law held in Ekaterinburg, Russia, in May 2008. (CI-Moscow Rec. at 6.) CI-Moscow quotes language to the effect that, if fees were an issue, Russian authorities sometimes deliver documents to interested parties via courier services, bypassing the Central Authority, with the agreement of the requested state. (CI-Moscow Rec. at 6-7.) CI-Moscow also notes that its attorney, Brodsky, is not authorized to accept service of the OIP. (CI-Moscow Rec. at 2.) Brodsky has represented CI-Moscow only in this matter, CI-Moscow has not attempted to evade service, and CI-Moscow's address is displayed on its web site. (CI-Moscow Rec. at 2, 10.)

Respondents Rapoport and Yenin oppose the Order Directing Service based upon several arguments advanced in their Opposition and their Supplemental Memorandum. In their Opposition, Rapoport and Yenin note that serving their U.S. counsel would violate due process given their limited relationship with their U.S. counsel. (Opp. at 2-5.) Rapoport and Yenin also note that the Division should be required to attempt to serve them in Russia and that serving them through their U.S. counsel is prohibited by Russian law. (Opp. at 5-10.)

In their Supplemental Memorandum, Rapoport and Yenin assert that it may be possible to serve the OIP in Russia with the assistance of The Federal Commission on Securities and the Capital Market of the Government of the Russian Federation (FCSCM) or the International Organization of Securities Commissions (IOSCO). (Supp. Memo at 2-3.) Rapoport and Yenin state that "the Division has given no indication that it has sought guidance from legal counsel in Russia," or shown that other methods of service, other than service on the Foreign Respondent's U.S. counsel, cannot be accomplished. (Supp. Memo at 3-4.) Similar to CI-Moscow, Rapoport and Yenin note that their attorney, Kraut, is not authorized to accept service of the OIP. (Opp. at 2; Supp. Memo at 6.) Contact with Kraut has been limited as Kraut did not appear in the investigation and has only been retained for specific limited purposes in this matter. (Opp. at 1-

[2] I use the following citation format: Rapoport and Yenin's Opposition to the Division's Motion as "(Opp. at __.)"; Rapoport and Yenin's Supplemental Memorandum as "(Supp. Memo at __.)"; CI-Moscow's Motion for Reconsideration as "(CI-Moscow Rec. at __.)"; Division's Opposition as "(Div. Opp. at __.)"

2; Supp. Memo at 4.) Under these circumstances, Rapoport and Yenin contend that the relationship between them and their counsel in this matter is insufficient to provide reasonable notice. (Opp. at 4-5; Supp. Memo at 4.)

The arguments of the Foreign Respondents are not persuasive. The Commission's Rules of Practice state that "Notice of a proceeding to a person in a foreign country may be made by any method specified in paragraph (a)(2) of this rule,[3] or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country." 17 C.F.R. § 201.141(a)(2)(iv). By analogy, the case law regarding Federal Rules of Civil Procedure (FRCP) Rule 4(f)(3)[4] is clear that directed service does not require the Division to prove that other forms of service are impossible or require the Division to attempt service directly on the Foreign Respondents. The United States Court of Appeals for the Ninth Circuit has concluded "that service of process under Rule 4(f)(3) is neither a 'last resort' nor 'extraordinary relief.'" Rio Props., Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1015 (9th Cir. 2002) (quoting Forum Fin. Group, LLC v. President & Fellows of Harvard College, 199 F.R.D. 22, 23 (D. Me. 2001)).

Nor does directed service require a plaintiff to exhaust all other methods of service. In Rio Properties, the court held that, "RIO need not have attempted every permissible means of service of process before petitioning the court for alternative relief. Instead, RIO needed only to demonstrate that the facts and circumstances of the present case necessitated the district court's intervention." 284 F.3d at 1016. The notes to FRCP Rule 4 also indicate that directed service is appropriate in the present case. "Court-directed service pursuant to Rule 4(f)(3) may be justified under certain circumstances, however, such as when Hague Service Convention[5] methods do not permit service 'within the time required by the circumstances.'" RSM Prod. Corp. v. Fridman, No. 06 Civ. 11512(DLC), 2007 WL 1515068 at *1 (S.D.N.Y. May 24, 2007) (citing Fed. R. Civ. P. 4(f)(3), Advisory Comm. Notes, 1993 Amendment).

The Division has made an adequate showing that directed service is warranted in this case. Russia's refusal to cooperate with the United States in judicial matters by the failure of its Central Authority to execute requests for service of process originating from the United States as well as its objections to Articles 8 and 10 of the Hague Service Convention are well documented. See RSM Prod. Corp. v. Fridman, No 06 Civ. 11512(DLC), 2007 WL 2295907 at *4 (S.D.N.Y. Aug. 10, 2007) (noting the Russian Federation's objections to Article 8 and 10 of the Hague Service Convention); Arista Records LLC v. Media Servs. LLC, No. 06 Civ. 15319(NRB), 2008 WL 563470 at *2 (S.D.N.Y. Feb. 25, 2008) ("Here, the record is plain that the Central Authority

[3] Paragraph (a)(2) of Rule 141 provides accepted methods of service on individuals, corporations, persons in a foreign country, in a stop order proceeding, and to persons registered with self-regulatory organizations. See 17 C.F.R. § 141(a)(2).

[4] Similar to Rule 141(a)(2)(iv), FRCP 4(f)(3) states that service on an individual not within any judicial district of the United States may be accomplished "by other means not prohibited by international agreement, as the court orders."

[5] Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, [1969] 20 U.S.T. 361, T.I.A.S. No. 6638 (Hague Service Convention).

of the Russian Federation denies all requests for service of process originating from the United States."). The possible alternative service methods identified by the Foreign Respondents do not appear likely to succeed in effecting service in a timely manner. Although Rapoport and Yenin have identified FCSCM and IOSCO as organizations that have agreed to provide assistance to the United States in certain matters, they have not established that these organizations are authorized to execute service of the OIP, that these organizations would volunteer to provide assistance with the execution of service, or that service by these organizations in Russia would comply with Russian law given the Russian Federation's objection to Article 10 of the Hague Service Convention.[6]

As noted in the Division's Opposition, neither the memorandum of understanding between the Commission and the FCSCM, nor the IOSCO memorandum of understanding, specifically addresses the validity of service of process by parties outside of Russia on Russian residents and citizens. (Div. Opp. at 6.) CI-Moscow has proposed that the Division attempt to serve the OIP through diplomatic channels through use of letters rogatory. However, the U.S. Department of State's web site has advised that, "while the Department of State is prepared to transmit letters rogatory for service or evidence to Russian authorities via the diplomatic channel, in the Department's experience, all such requests are returned unexecuted." Bureau of Consular Affairs, U.S. Dep't of State, Russia Judicial Assistance, available at http://travel.state.gov/law/info/judicial/judicial_3831.html (last visited Feb. 4, 2009). Even if consular channels were available, the U.S. Department of State indicates that execution of letters rogatory may take a year or more. See Bureau of Consular Affairs, U.S. Dep't of State, Preparation of Letters Rogatory, available at http://travel.state.gov/law/info/judicial_ 683.html (last visited Feb. 4, 2009).

The notes to FRCP Rule 4(f)(3) highlight that Article 15 of the Hague Service Convention permits alternate service methods when a foreign country's Central Authority does not respond within six months. See Fed. R. Civ. P. 4(f)(3), Advisory Comm. Notes, 1993 Amendment. CI-Moscow makes reference to conclusions summarized from a conference in Ekaterinburg, Russia, held on May 15 and 16, 2008, which suggest that Russian authorities sometimes bypass the Central Authorities and transmit documents directly to interested parties through courier services. See Conclusions: Seminar of the Hague Conference on Private International Law, Hague Service Convention & Hague 1970 Evidence Convention, 15-16 May

[6] Article 10 of the Hague Service Convention states that,

> Provided the State of destination does not object, the present Convention shall not interfere with a) the freedom to send judicial documents, by postal channels, directly to persons abroad, b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination, and c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Hague Service Convention, art. 10.

2008, Ekaterinburg, available at http://www.hcch.net/upload/ekaterinburg_conclusions_ e.pdf (last visited Feb. 4, 2009). However, the plain language of this passage does not identify the Russian authorities to be used for service and indicates that the Central Authority is only bypassed sometimes. There is no clear indication from this document whether attempted service of the OIP through this method would be successful or timely.

CI-Moscow noted that it has not attempted to evade service and that its address is available on its web site. However, there is no requirement that the Division show evasion by a respondent located in Russia in order to receive directed service. See RSM, 2007 WL 2295907, at *5.

I find the arguments advanced by the Foreign Respondents concerning the extent of their relationship with their U.S. counsel, the likelihood that service of the OIP on U.S. counsel will not provide adequate notice, and the fact that both Kraut and Brodsky have not been authorized to accept service on behalf of their clients, to be unpersuasive. The fact that the Foreign Respondents' counsel is not authorized to accept service does not prevent a court from ordering directed service on said counsel. See RSM, 2007 WL 2295907, at *6; Forum Financial Group, 199 F.R.D. at 24. Further, with respect to the adequacy of notice, the Supreme Court has held that, in order to satisfy the requirements of due process, service of process must provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present all objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (citations omitted). In Rio Properties, the attorney for the defendant, John Carpenter, was not authorized to accept service, merely received a copy of the complaint and summons from the plaintiff, and was consulted about how to respond. See 284 F.3d at 1013. However, that court held that, "Service upon Carpenter was also appropriate because he had been specifically consulted by RII regarding this lawsuit." Id. at 1017. Given the Division's prior investigation of the Foreign Respondents, Brodky's representation of CI-Moscow's U.S. affiliate, CentreInvest, Inc., and Kraut's representation of Rapoport and Yenin since September 8, 2008, in order to review and analyze the Division's recommendation of this enforcement action, I find that the Foreign Respondents would have adequate notice of this action through service of the OIP on their U.S. counsel.

For good cause shown, I DENY CI-Moscow's Motion for Reconsideration and Rapoport and Yenin's cross-motion to vacate or, alternatively, reconsider Order of December 31, 2008. Service of the OIP on the Foreign Respondents' U.S. counsel shall be considered effective as of January 8, 2009, the last date which the Foreign Respondents received the OIP as confirmed by return receipt of certified mail. The Foreign Respondents shall file Answers to the OIP by March 2, 2009.

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Robert G. Mahony
Administrative Law Judge