UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16389

In the Matter of

VCAP Securities , LLC, and
Brett Thomas Graham,

Respondents.

REPLY BRIEF IN SUPPORT OF BRETT THOMAS GRAHAM'S MOTION TO MODIFY ORDER

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PRELIMINARY STATEMENT

As the Second Circuit Court of Appeals stated in *McCarthy v. S.E.C.*, "[i]t is familiar law that the purpose of expulsion or suspension from trading is to protect investors, ***not to penalize brokers***." 406 F.3d 179, 188 (2d Cir. 2005) (emphasis added). Yet, the Order[1] issued by the Commission more than two years ago imposes an unnecessarily harsh punishment on the Respondent, Brett Graham ("Respondent" or "Mr. Graham"), despite the fact that no investors were harmed by his conduct. Instead, the severity of the Commission's punishment is directly attributable to the Enforcement Division's original misconception of the nature of Mr. Graham's wrongdoing. In essence, the Enforcement Division believed that Mr. Graham had entered into a *quid pro quo* arrangement with one of the parties to the auction he was overseeing, but when the facts showed otherwise, it failed to recalibrate the severity of the relief it sought. As a result, Mr. Graham's bar is not justified by his conduct, and the Commission should exercise its broad authority to modify the Order as requested by this motion.

Given the immense disparity in power and resources between the federal government and an individual litigant, it is critically important that any resolution – including one reached *via* settlement – meet an objective standard of fairness and reasonableness. It is respectfully submitted that the Commission should not impose an unjustifiably severe punishment just because the staff was able to pressure a party into consenting to it; instead, the Commission Orders must reflect a resolution that is objectively reasonable and in the public's interest. Viewed under this standard, the broad, industry-wide bar issued against Mr. Graham was unduly severe and not reasonably related to his underlying conduct.

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[1] Capitalized terms not otherwise defined herein shall have the same meaning as in in the Affidavit of Brett Graham in Support of Motion to Modify Order, dated January 12, 2017 (the "Graham Aff.").

STATEMENT OF FACTS

The circumstances which led to the Order and the events which have transpired since its entry are set forth in the initial and supplemental affidavits submitted by Mr. Graham in support of this motion. Respondent summarizes below some of the facts which are most salient to his motion to modify the Order, and refers the Commission to such affidavits for additional detail.

Mr. Graham Did Not Engage in a *Quid Pro Quo*

The Enforcement Division's investigation into an auction run by VCAP began in 2013 and was triggered by an instant message from Mr. Graham to the highest bidder for a security instructing the bidder to reduce its bid and adding the phrase "remember me." Graham Aff. ¶ 11. While the Enforcement Division interpreted this as proof of a *quid pro quo*, a year-long investigation and extensive testimony demonstrated that there was no such arrangement. *Id.* Not only did the bidder never provide any incremental business or other benefit to VCAP following the auction, it was in no position to do so; and no such arrangement is reflected in the admitted facts contained in the Order. *Id.* Mr. Graham believed that it was commercially reasonable to advise the bidder that its bid was completely out of the range of the other bids. *Id.* As a result, the Enforcement Division's initial assessment of Mr. Graham's conduct was wrong.

Mr. Graham Did Not Benefit from the Conduct Alleged in the Order

Vertical's indirect bidding participation in auctions run by its broker-dealer affiliate actually increased the proceeds of the auction to the benefit of the liquidating Client. Graham Aff. ¶¶ 12, 34. It is especially telling that, in the more than two years since the entry of the Order, ***not a single legal or equitable claim arising from any auction has been asserted against Mr. Graham, VCAP or Vertical in any forum.*** *Id.* ¶ 11. Moreover, Vertical derived no meaningful benefit from its indirect participation in the auctions. The Vertical Group could have "purchased [the securities] immediately after the auction." *Id.* ¶ 12. As Mr. Graham notes in his

affidavit, "the net result for Vertical would have been the same, as we would own the securities . . . at approximately the same price, with the only 'loser' being the client." *Id.* The most compelling evidence of Vertical's failure to profit from its conduct is the fact that "Vertical was not required to disgorge any profits on the trades as part of the Order" because it took a substantial risk in buying the securities and held them for at least one year (and in many cases multiple years) before selling them. *Id.* ¶ 13.[2]

Mr. Graham's Violations Were Unintentional

Mr. Graham had a good faith basis for believing that Vertical was permitted to participate indirectly in the auction without violating the terms of the engagement agreement. Graham Aff. ¶ 12. While Vertical was in fact barred from bidding "directly or indirectly" in only one of the auctions, this prohibition marked a deviation from prior template agreements with which Mr. Graham was familiar. *Id.* ¶ 13. Despite reviewing the agreement for edits, Mr. Graham failed to spot the inclusion of the bar against indirect participation, which was not highlighted. *Id.* Moreover, he had no reason to suspect that such a prohibition would be included because: (1) Vertical was expressly permitted to bid on the securities following the auction and had no reason to suspect that its indirect participation in the auction would be barred when the net result was the same; and (2) the clients benefitted from Vertical's indirect participation. *Id.* ¶¶ 12-13. Mr. Graham's conduct was therefore careless at worst, and a far cry from the Enforcement Division's *quid pro quo* theory of the case, which prompted the initial investigation.

[2] While the Order reflects that VCAP and Mr. Graham received fees for conducting the liquidations (Order, ¶ 21), it does not state that those fees were generated from the wrongful conduct alleged against Mr. Graham.

ARGUMENT

I. MR. GRAHAM'S PUNISHMENT IS EXCESSIVE AND NOT IN THE PUBLIC INTEREST

It is well-established that the purpose of an SEC suspension is to "protect investors, not to penalize brokers." *McCarthy*, 406 F.3d at 179. The "foremost consideration must therefore be whether [the] sanction protects the trading public from further harm." *Id.* Penalties should be "reasonably related and proportional to the illegal conduct" and "carefully measured." *See Commodity Futures Trading Comm'n v. Cap. Bly Mgmt., LLC*, No. 09-cv-508, 2011 WL 2357629, at *11 (M.D. Fla. June 9, 2011). Where a defendant has already been punished, and the imposition of an additional penalty would not further the goal of deterrence, the Commission should modify its penalty accordingly. *See SEC v. Patel*, No. 93-cv-4603, 1994 WL 364089, at *4 (S.D.N.Y. 1994); *see also Arthur Lipper Corp. v. S.E.C.*, 547 F.2d 171 (2d Cir. 1996) (reversed on other grounds). Where it fails to do so, courts may modify a sanction or penalty instead. *See id.*; *McCarthy*, 406 F.3d 179.

The continued enforcement of the Order is not reasonably related to the SEC's primary goal of "protecting investors" because no investors were harmed as a result of Mr. Graham's conduct. Graham Aff. ¶¶ 11, 13, 33-34. Instead, it is now clear that the Enforcement Division's zealous prosecution and its proposed settlement terms were influenced by its erroneous assumption that Mr. Graham was manipulating the auction process in bad faith as part of some illicit scheme. Graham Aff. ¶ 11. The Enforcement Division's initial error is perhaps understandable, but its failure to change course is not. By issuing a blanket bar against Mr. Graham, even though (1) neither he nor VCAP benefitted from the infraction and (2) Mr. Graham's misconduct was utterly unintentional (*see* pages 2-3, *supra*), the Commission has

failed to impose a penalty "reasonably related and proportional to the illegal conduct." *See Commodity Futures Trading Comm'n*, 2011 WL 2357629, at *11.

Even now, the Statement in Opposition to the Motion to Modify the Bar Order ("Opp. Statement") argues in favor of an unjustifiably draconian penalty against Mr. Graham, while failing to demonstrate that the severity of the bar is in the public interest. Not a single legal proceeding was threatened or commenced by an investor, trustee or any other party in the two years since the entry of the Order despite ***full knowledge of the facts***. Graham Aff. ¶ 11. Moreover, VCAP's trustee clients benefitted from the bids submitted on behalf of VCAP because it enabled them to receive more than they would have otherwise received. *Id.* In short, the Enforcement Division is fighting a battle on behalf of persons that have claimed no harm and have instead remained sympathetic to Mr. Graham. *Id.* ¶ 18. Given this hindsight, the penalties set forth in the Order are needlessly harsh and the Commission has ample reason to modify them as requested.[3] By lifting the bar now, Mr. Graham will have been suspended from employment in the financial industry for a period of two years, in addition to having paid a total of $327,733.00 in disgorgement and fines. *See* Order, at 11.[4]

[3] The Order is even more unfair in light of the outcome in *U.S. v. Litvak*, where the Second Circuit reversed a conviction of a defendant for securities fraud based on the trial court's improper exclusion of expert testimony which purported to show that the failure to disclose certain price variations were not material to sophisticated investors. 808 F.3d 160, 185 (2d Cir. 2015). On remand, the jury ended up acquitting the defendant on nine of ten counts. *See U.S. v. Litvak*, Case No. 13-CR-00019, ECF No. 510 (Filed Jan. 27, 2017) (verdict form finding defendant not guilty of nine of 10 counts of securities fraud). Mr. Graham's conduct was similarly inconsequential to the participants in the auction and, unlike the defendant in *Litvak*, he did not even materially benefit as a result of his conduct. (*See supra* at 2-3.)

[4] While it is true that the Order gives Mr. Graham the right to reapply for association with firms in the financial industry a year from now, Mr. Graham explained in his affidavit that such a right is illusory since it is extremely difficult to locate a firm that would be willing to invest the time and effort to sponsor him. Graham Aff. ¶ 44. Given that the conduct here did not result in harm to investors, the issuance of a bar was unduly punitive in the first instance and should be removed in its entirety. Mr. Graham is, however, willing to limit his association with a broker-dealer firm in a non-supervisory capacity.

Moreover, the continued enforcement of the Order in its current form is not justifiable in light of the 10th Circuit Court of Appeals' recent ruling that the SEC's process for appointing administrative law judges is unconstitutional. *See Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016); Graham Aff. ¶ 35. On February 16, the D.C. Circuit Court of Appeals signaled that it may reach the same conclusion by vacating a prior finding that the SEC's appointment of administrative law judges did not violate the constitution, and granting a petition for *en banc* review of this same constitutional question. *PHH Corp. v. Consumer Fin. Prot. Bureau*, No. 15-1177, 2017 WL 631740 (D.C. Cir. Feb. 16, 2017) (per curium). Such developments call into question the legal basis of the Order itself, and warrant a modification of the Order because the threat of an unconstitutional administrative law proceeding was the primary factor in Mr. Graham's decision to consent to the Order. Graham Aff. ¶ 35.

II. THE STANDARD FOR MODIFICATION IS LESS STRINGENT THAN THE OPPOSITION CLAIMS AND THE FACTORS FAVOR MODIFICATION

The Enforcement Division portrays the standard for modification as far more exacting than it is in practice. The Opposition Statement ignores several decisions in which the Commission has modified bar orders in the absence of "compelling circumstances." (*See* Opp. Statement at 8-11.) In short, the absence of "compelling circumstances" in no way prohibits the modification Mr. Graham seeks in his application. *See Salim B. Lewis*, Securities Exchange Act Release No. 51817, 2005 WL 1384087, at *4 (June 10, 2005) (finding "no compelling circumstances justify vacating the bar" but holding that "it is appropriate to modify the bar against Lewis by vacating the portion . . . prohibiting Lewis from association with a municipal securities dealer, investment adviser, or an investment company"); *Mark S. Parnass*, Securities Exchange Act Release No. 65261, 2011 WL 4101087, at *3 (Sept. 2, 2011) ("it is not appropriate to grant the petition . . . to vacate the bar . . ,

however it is appropriate to modify the bar . . . insofar as it prohibits him from associating with an investment adviser or investment company.")

For example, in *Jesse M. Townsley, Jr.*, the Commission held that "there [were] no compelling circumstances [] that would warrant vacating the [] bar order," but went on to hold that it would be "appropriate to modify the bar against Townsley by vacating the portion of the bar order prohibiting Townsley from association with an investment company or a municipal securities dealer." Securities Exchange Act Release No. 2410, 2005 WL 1963783, at *2 (July 29, 2005). The Commission reached the same conclusion in *Charles E. Gaecke*, where it held that there were "no compelling circumstances that warrant vacating the bar order," but nevertheless concluded that "it was appropriate to modify the bar order by vacating that portion prohibiting Gaecke from association with a broker, dealer, investment company or municipal securities dealer." SECDIG 1007-233-9, 2007 WL 4248541, at *1 (Dec. 5, 2007). In short, the Commission has "the flexibility to consider any proposed associations and to evaluate the nature and extent of the supervision to be exercised" over the Respondent. Id. at *2.[5]

While the Enforcement Division correctly articulates the factors the Commission may consider in determining Mr. Graham's application, it misapplies the salient facts. For example, the Enforcement Division refers in conclusory fashion to the "seriousness and repeated nature of Graham's conduct" (Opp. Statement at 9), but completely ignores the undisputed fact that no investors were harmed and that neither VCAP nor Mr. Graham profited from the conduct. These conclusions are not based, as the Enforcement Division suggests, on "new evidence"; rather, they are based on the facts as memorialized in the Order itself. Moreover, the Enforcement Division

[5] While the Commission may certainly consider the factors highlighted by the Enforcement Division, *Lewis*, *Townsely*, *Parnass* and *Gaecke* show that it often grants modifications without performing the factor by factor analysis highlighted in the Opposition Statement.

had the opportunity in its Opposition Statement to show that investors were harmed or that Respondent profited, but it failed to do so. In light of this failure, and given the irrefutable facts as summarized in the Graham Aff., the nature of Mr. Graham's misconduct does not warrant the broad-sweeping, industry-wide bar imposed by the Order.

Given the severity of the Order and its questionable constitutional foundation, the time that has passed since its entry also supports Mr. Graham's request for modification. Mr. Graham has suffered under the Order for more than two-thirds of the presumed period of the bar, has complied with all of his legal obligations since it was entered and is entitled to the relief he seeks. The Commission decisions cited by the Enforcement Division do not support a contrary result. In *Michael H. Johnson,* Securities Exchange Act Release No. 75894, 2015 WL 5305993, at *4 (Sept. 10, 2015), Johnson served less than half of bar period contemplated in the order. In *Matter of William H. Pike,* Investment Company Act Release No. 20417, 1994 WL 389872, at *2 (July 20, 1994), *petition denied,* 52 F. 3d 1122 (D.C. Cir. 1995) (per curium) the suspension period contested by the movant had already expired; consequently, the length of the suspension was not at issue.

Mr. Graham's "record of compliance" also supports his request for modification. As noted above, Mr. Graham fully complied with the terms of the Order, and such compliance involved a ***full year*** of directly regulated activity following the issuance of the Order. This demonstrated record of compliance, as confirmed by a monitor, along with Mr. Graham's exemplary record of 30-plus years in the highly-regulated finance industry (Graham Aff. ¶ 5) is compelling evidence of his ability and willingness to comply with regulatory requirements.

III. MR. GRAHAM HAS COMPLIED WITH THE ORDER AND SUFFERED AS A RESULT

The Order created a one year carve-out period during which time Mr. Graham could assist with the sales of securities then held by Vertical during a presumed wind-down/transition

period. Graham Aff. ¶ 15. However, the Order barred Mr. Graham from working on premises, communicating with Vertical's investors,[6] limited his compensation and mandated that an outside observer be hired to verify his compliance with the Order. *Id.* Despite the considerable hardship imposed by the Order, Mr. Graham complied with it in its entirety during the carve-out period. *Id.* ¶ 3.

Contrary to the Enforcement Division's claim that he "has had no compliance record . . . since the issuance of the bar," Mr. Graham has provided a detailed account of his assiduous compliance with the Order during the carve-out period. *Id.* ¶¶ 25-26. Despite the fact that his absence allowed other members of Vertical's Sales Committee to exploit the carve-out period for their own advantage and to the detriment of investors (*see id.* ¶¶ 21-25), Mr. Graham fully complied with the Order and continued to work on behalf of Vertical's investors throughout the carve-out period. *Id.* ¶ 26. As set forth in his affidavit:

> A Monitor was retained during the carve-out period to oversee my compliance and based on my conversations with him I believe he was satisfied that I complied in all respects and that any protestations, of which he was well aware, were all made within the terms of the Order. I have certified such to the Commission as required. I have not appeared on Vertical's premises since the Order, I did not communicate with investors pursuant to the Order during the carve-out period, I did not participate in managing the business, and VCAP and I have disgorged and/or paid fines as determined in the Order. Despite the difficulties of circumstance that have arisen, I have taken my commitments seriously and abided by them in full, even when it hurt to do so. *Id.*

Notwithstanding his compliance with its terms, the Order inflicted considerable burdens on Mr. Graham. His professional life has come to a grinding halt, his engagement to be married is similarly on hold, and the Order has made it "effectively impossible both within and outside

[6] The implementation of this communications bar was particularly damaging because it allowed one of Vertical's partners to exploit the carve-out period for her own benefit, and to the great detriment of Mr. Graham and Vertical's investors. Graham Aff. ¶ 22.

the financial services industry due to limitations on corporate activities if employing someone subject to a bar." *Id.* ¶ 28. Moreover, he has been "subjected to extreme personal and financial distress as a result of a baseless claim asserted by Vertical's former Head of marketing who attempted to leverage the [Order] into an extortionate personal payout" and later had her baseless allegations published in the New York Times. *Id.* ¶ 29.

Despite these hardships, Mr. Graham is eager to return to the workforce. While he has not been presented with a specific job offer as a result of the Order, he has devised a number of different career options that would make good use of his talents and expertise. *Id.* ¶¶ 40-42, 45. However, all of these paths are unavailable to him so long as the Order remains in force in its current form. Only by adopting Mr. Graham's proposed modifications will the Commission allow him to make use of his talents and continue what had been – prior to the events set forth in the Order – an unblemished and exemplary career in the securities industry. *Id.* ¶¶ 5, 46.

IV. MR. GRAHAM'S CONSENT TO THE SETTLEMENT WAS NOT "KNOWING" OR "INFORMED"

The Enforcement Division is incorrect in its assertion that Mr. Graham "does not now claim that his consent to the bar was "'not voluntary, knowing, or informed.'" Opp. Statement at 5. That is precisely what Mr. Graham is contending. As explained in great detail in his supplemental affidavit, Mr. Graham was not informed, prior to his testimony before the Enforcement Division or his consent to the Order, that another partner of Vertical made statements concerning her involvement in the actions which were at odds with Mr. Graham's clear recollection of the facts, and which would have altered Mr. Graham's testimony. Graham Supp. Aff.[7] ¶ 2. Moreover, Mr. Graham's counsel, who also represented the partner who

[7] Supplemental Affidavit of Brett Graham in Further Support of Motion to Modify Order, sworn to on February 4, 2017.

testified, incorrectly advised Mr. Graham that he was not permitted to review the partner's testimony. *Id.* While the Enforcement Division seeks to disparage this as "self-serving" (Opp. Statement at 4), this does not in any way refute that Mr. Graham did not know those facts, nor could he have known them, at the time he consented to the Order. As explained in Mr. Graham's Supp. Aff., he did not learn of his partner's testimony until January of 2017. Due to the fact that Mr. Graham was prevented from viewing the partner's testimony, the Enforcement Division's assertion that he had the opportunity to refute such testimony in his own investigative testimony (Opp. Statement at 6) makes no sense. Clearly, Mr. Graham could not refute statements which he did not know and which were deliberately kept from him.

The Enforcement Division's contention that Mr. Graham "forfeited" his right to bring these facts to the Commission's attention is a red herring. Mr. Graham is not seeking to introduce new facts relating to the violations alleged against him. To the contrary, he has consistently stated that he does not dispute those facts. What Mr. Graham is contending is that, had he known that his partner was inaccurately portraying her own role in the bond liquidation/indirect bidding process, he would have refuted those assertions in his testimony and provided a more balanced and accurate view of the facts to the Enforcement Division. Graham Supp. Aff. ¶¶ 3-9. The settlement was reached in large part because Mr. Graham was pressured to agree to be the sole individual named in the Order, which allowed Vertical to continue to operate. Graham Aff. ¶¶ 14-16. Had the investigative staff been provided with a more accurate view of the roles played by the various participants, a different resolution may have resulted.

As a result, the Order was not only overly severe, Mr. Graham's consent to the Order was neither "knowing" nor "informed." Under such circumstances, the policy favoring the finality of

Commission orders is outweighed by the unjust and unfair nature of the Order and the process in which it was agreed to.

V. THE ORDER SHOULD BE MODIFIED TO INCLUDE A PROVISION STATING THAT THE DISQUALIFICATION UNDER RULE 506(D) DOES NOT APPLY

Rule 506(d)(1)(v) of Regulation D promulgated under the Securities Act of 1933, as amended, provides that the private offering exemption under Rule 506, 17 C.F.R. §§230.506, *et seq.* ("Rule 506"), is not available to an issuer if:

> any director, executive officer, other officer [of the issuer] participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such sale; any investment manager of an issuer that is a pooled investment fund; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such investment manager or solicitor; or any director, executive officer or other officer participating in the offering of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor:
>
> * * *
>
> (v) is subject to any order of the Commission entered within five years before such sale that, at the time of such sale, orders the person to cease and desist from committing or causing a violation or future violation of:
>
> (A) . . . section 10(b) of the Securities Exchange Act of 1934 . . . or any rule or regulation thereunder;

The Order triggers the disqualification under Rule 506(d)(1)(v) since it orders that Mr. Graham "cease and desist from committing or causing any violations and any future violations of Section 10(b) of the [Securities] Exchange Act [of 1934] and Rule 10b-5 thereunder." As a result, even if the bar provisions of the Order are vacated, the Order will have the effect of precluding Mr.

Graham from participating in an offering under Rule 506 in various capacities for a period of five (5) years from the date of the Order unless relief from this disqualification is granted.

Rule 506(d)(2)(ii) provides that the disqualification under Rule 506(d)(1)(v) shall not apply if "[u]pon a showing of good cause and without prejudice to any other action by the Commission, . . . the Commission determines that it is not necessary under the circumstances that an exemption be denied." Graham respectfully submits that such relief is warranted.

As discussed in his affidavit, the disqualification under Rule 506(d) would prevent Mr. Graham from acting in most capacities with respect to offerings relying on the Rule 506 exemption. Graham Aff. ¶¶ 39-45. His only hope of pursuing such opportunities, therefore, depends upon a modification of the Order. The Commission has the authority to issue such relief pursuant to Rule 506(d)(2)(ii). Such relief is warranted here because the conduct which led to the issuance of the Order did not involve the offering of securities or reliance on the private offering exemption under Rule 506, and the Order does not contain any findings of violations of Section 5 of the Securities Act of 1933 or the Rules promulgate thereunder. Thus, there is no public interest benefit for the Order to have the collateral effect of precluding Mr. Graham from engaging in activities related to such offerings.[8]

The Enforcement Division's Opposition Statement does not address this portion of the relief requested in the Application, and instead limits its opposition to the removal of the bar provisions of the Order which bar him from association with certain entities. *See, e.g.,* Opp.

[8] Though the Commission has delegated the authority to grant waivers from the effect of Rule 506(d)(2) to the Office of Small Business Policy of the SEC's Division of Corporation Finance (https://www.sec.gov/divisions/corpfin/guidance/262-505-waiver.htm.), this is not the exclusive procedure for seeking such relief, since Rule 506(d)(2) expressly authorizes the Commission to grant such relief directly. Mr. Graham respectfully submits that it would be unduly burdensome and cause further delay in obtaining the requested relief if he is required to submit a request for such a waiver to a separate office of the Commission.

Statement at 3 ("[Mr. Graham] seeks to remove portions of the bar so that he may immediately associate with certain entities with no restrictions or review").

Based on the foregoing, Mr. Graham respectfully requests that the relief requested pursuant to Rule 506(d)(2)(ii) be granted.

CONCLUSION

For the foregoing reasons, Mr. Graham respectfully requests the Commission to modify the Order by: (a) removing the provisions contained in Section IV.C. of the Order which bar Mr. Graham from (i) being associated with an investment adviser, (ii) being associated with a securities broker or dealer in a non-supervisory capacity, and (iii) serving or acting as an officer, director or employee of a company which issues securities, including, but not limited to "penny stocks," as that term is defined in Rule 3a51-1, promulgated under the Securities Exchange Act of 1934, as amended; and (b) adding a provision to the Order pursuant to Rule 506(d)(2)(ii), promulgated under the Securities Act of 1933, as amended, which states that, notwithstanding any other provision of the Order, the Order shall not operate to preclude any issuer with which Mr. Graham is associated as an officer, director, employee or investment adviser, from relying upon the exemption under Rule 506, and grant such other and further relief as the Commission deems just and proper.

Dated: New York, New York
March 7, 2017

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Certificate of Service

I certify that on March 7, 2017, the foregoing Reply Brief in Support of Brett Thomas Graham's Motion to Modify Order was served on counsel and other persons entitled to notice as follows:

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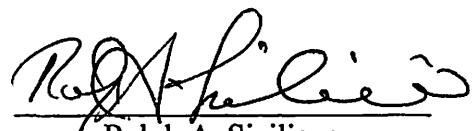
March 7, 2017



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