

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20086**

**In the Matter of**

**GARY EDWARD HAYNES,**

**Respondent.**

**MOTION OF THE DIVISION OF ENFORCEMENT TO AMEND**  
**ORDER INSTITUTING PROCEEDINGS**

Pursuant to Rule of Practice 200(d), the Division respectfully requests that the Order Instituting Proceedings in this matter be amended, in paragraph II.2, (1) by deleting the words “Embezzlement from a Vulnerable Adult” and substituting for those words “exploiting a vulnerable adult;” and (2) by deleting the reference to “MCL 750.174” and instead of such reference substituting “MCL 750.174a.” A clean and redline version of the Amended Order Instituting Proceedings are attached as Exhibits A and B to this motion. The requested amendments will correct errors in the original Order Instituting Proceedings.

Amendments of orders instituting proceeding should be freely granted, subject only to the consideration that other parties should not be surprised, nor their rights prejudiced. *Carl L. Shipley*, 45 S.E.C. 589, 595 (1974). Where amendments to an order instituting proceedings are intended to correct an error . . . the Commission has authority to amend the order. *See, e.g., Don A. Long*, Admin. Proc. Rulings Release No. 233 (Mar. 31, 1980), 52 SEC Docket 497 (Aug. 18, 1992) (hearing officer's grant of motion to conform pleading to evidence adduced at hearing).

Respondent will not be surprised nor will his rights be prejudiced if the Commission amends the Order Instituting Proceedings as requested. By defaulting, and then ignoring the Commission's earlier order to show cause, Haynes has waived any objections he might have on this issue. Moreover, Haynes was present at the reading of the verdict and at his sentencing and therefore knows that he was charged with, and found guilty of, violating MCL § 750.174a. (See Motion of the Division of Enforcement for an Opinion of the Commission Finding Respondent in Default, Making Findings, and Imposing Sanctions, filed June 9, 2021, Ex. 6 at 3 and Ex. 7 at 3.)

Dated: August 18, 2022

Respectfully submitted,

s/John E. Birkenheier

John E. Birkenheier

Brian D. Fagel

Division of Enforcement

Securities and Exchange Commission

Chicago Regional Office

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused true copies of the Motion of the Division of Enforcement to Amend Order Instituting Proceedings and Exhibits A and B thereto to be served on the following on this 18th day of August 2022, in the manner indicated below:

CERTIFIED MAIL



Dated: August 18, 2022

s/John E. Birkenheier  
John E. Birkenheier

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5597 / September 28, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20086**

**In the Matter of**

**Gary Edward Haynes,**

**Respondent.**

**[PROPOSED] AMENDED ORDER**  
**INSTITUTING ADMINISTRATIVE**  
**PROCEEDINGS PURSUANT TO SECTION**  
**203(f) OF THE INVESTMENT ADVISERS**  
**ACT OF 1940 AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers of 1940 (“Advisers Act”) against Gary Edward Haynes (“Respondent” or “Haynes”).

**II.**

After an investigation, the Division of Enforcement alleges that:

1. Haynes was an investment adviser representative associated with two SEC-registered investment advisers between November 1, 2010 and October 24, 2016. Haynes, 59 years old, is currently incarcerated in Ionia, Michigan.
2. On December 20, 2018, in a Michigan state court, Haynes was convicted by a jury of one count of “Conducting A Criminal Enterprise” and of several counts of exploiting a vulnerable adult – violations of MCL 750.159i(1) and 174a. Haynes was sentenced to between 7½ and 20 years imprisonment. The People of the State of Michigan v. Gary Edward Haynes, Case No. 18-004131-FH-D (State of Michigan, 14<sup>th</sup> Judicial Circuit, Muskegon County).
3. Haynes’s indictment stated that between 2011 and 2015, Haynes embezzled over \$300,000 from an elderly individual. According to the indictment, the individual had given him

access to her financial accounts to enable him to assist her in paying her bills. The indictment added that Haynes transferred funds from the individual's accounts to accounts in the names of companies he operated, and that Haynes spent the funds on himself

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

### IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to [APFilings@sec.gov](mailto:APFilings@sec.gov) in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as

witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman  
Secretary

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