

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20653

In the Matter of

DONALD HOWARD,

Respondent.

DIVISION OF ENFORCEMENT'S
MOTION TO AMEND ORDER INSTITUTING PROCEEDINGS

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The Division of Enforcement (“Division”), by counsel, pursuant to Rules of Practice 154(a) and 200(d)(2), respectfully moves to amend the November 19, 2021 Order Instituting Proceedings (“OIP”) in this matter to clarify certain allegations, including the identity of Respondent, that are within the scope of the original OIP, as described below. A proposed amended OIP is attached hereto.

I. BACKGROUND

This proceeding was instituted on November 17, 2021. *See Donald Howard*, Securities Exchange Act Rel. No. 93599 (Nov. 17, 2021). On April 4, 2022, the Commission issued an Order to Show Cause to Respondent, who failed to respond to the Order Instituting Proceedings, ordering Respondent to show cause by April 18, 2022 why he should not be deemed in default and this proceeding determined against him. *See Donald Howard*, Securities Exchange Act Rel. No. 94600 (Apr. 4, 2022).

On April 8, 2022, the Division learned that the U.S. Attorney’s Office for the Northern District of Ohio had dismissed “Donald Howard” from its indictment in a parallel criminal matter concerning Respondent currently pending in the U.S. District Court for the Northern District of Ohio¹ and had filed a complaint and FBI affidavit (attached as **Exhibit A**), as to a Robert Louis Carver, who, according to the affidavit, stole the identity of another individual named Donald Howard and perpetrated the conduct that is the subject of the OIP in this proceeding. *See Ex. A*, FBI Affidavit ¶¶ 7-8; *Ex. B, United States v. Carver* Docket. As noted in the FBI affidavit, Carver, who was previously a registered investment advisor, was barred in 2008 by the Commission for violations of the antifraud provisions of the federal securities laws. *Id.* ¶ 5; *Robert L. Carver*,

¹ *See United States v. Spivak, et al.*, Case No. 1:21-cr-00491-JPC-8, (N.D. Ohio), Dkt. No. 112.

Securities Exchange Act Rel. No. 58423 (Aug. 25, 2008) (attached as **Exhibit C**); *SEC v. Carver, et al.*, 8:08cv627, Dkt. No 46 (C.D. Cal. Aug. 1, 2008) (attached as **Exhibit D**) (consent judgment entered against Carver, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. According to the FBI, Carver was indicted on mail fraud charges, fled, and has been a fugitive since 2011. *Id.* ¶ 6.

On April 18, 2022, in light of this newly-discovered information, on the Division filed a motion to stay this proceeding to conduct additional research regarding Mr. Carver and seek to amend the OIP or take other action as appropriate. On April 29, 2022, the Commission granted the Division's motion and postponed the matter until further notice. *See Donald Howard*, Securities Exchange Act Rel. No. 94825 (Apr. 29, 2022).

Since that time, the Division has been in contact with the U.S. Attorney's Office for the Northern District of Ohio and the FBI in Cleveland, Ohio concerning Mr. Carver and made certain requests for information. The FBI and/or the U.S. Attorney's Office sought leave of court and/or other approvals in order to share certain information with the Division Staff, a process which took several months. Upon receiving the requisite approvals, the FBI provided the Division with certain information regarding Mr. Carver. While the Division reviewed the information provided by the FBI, the Division, pursuant to the April 29, 2022 Postponement Order, submitted Status Reports to the Commission regarding its progress. Pursuant to Rules 150 and 151 of the Commission's Rules of Practice, the Commission served Mr. Carver with a copy of these filings.

Now that the Division has completed its review of the files provided by the FBI, the Division respectfully requests that the Commission grant its motion to amend the OIP to include Respondent's

correct identity and Respondent's history of securities laws violations. As ordered by the Commission, the proposed form of amended OIP, in both clean and redline forms, is attached hereto as **Exhibit E**.

II. ARGUMENT

Pursuant to Rule of Practice 200(d)(1), the Commission may, at any time, upon motion by a party, amend an OIP to include new matters of fact or law. *See* 17 C.F.R. § 201.200(d)(1); *see also* *Siming Yang*, Exchange Act Rel. No. 34-73637, 2014 WL 6477195, at *2 (Nov. 19, 2014) (granting Division request to amend OIP to include subsequently-developed facts). The Commission has repeatedly stated that such amendments to OIPs "should be freely granted, subject only to the consideration that other parties should not be surprised nor their rights prejudiced." *See Yang, supra*; *see also* *Robert David Beauchene*, Exchange Act Rel. No. 68974, 2013 WL 661619, at *2 (Feb. 25, 2013) (quoting *Charles K. Seavey*, Investment Advisers Act Rel. No. 1925A, 2001 WL 228030, at *2 (Mar. 9, 2001)).

In this case, the purpose of the OIP amendment is to correct an error in the original pleading, which was caused by Carver's use of a stolen identity, and to include facts related to Carver's prior conduct, which provides an independent basis for remedial sanctions. *See Beauchene*, 2013 WL 661619, at *2; *see also* *Daniel J. Gallagher*, Exchange Act Rel. No. 34-70305, 2013 WL 4716026, at *1 (Sept. 3, 2013). Further, for the purposes of judicial economy, the Division also revises the language of Paragraph 3 of the original OIP in order to put the facts alleged in the Division's district court complaint before the Commission. *See Clinton Maurice Tucker II*, Exchange Act Rel. No. 94208 (Feb. 9, 2022).

Respondent can claim neither surprise nor prejudice. This is not the initiation of a new proceeding or an expansion of charges. Rather, the purpose of the Motion is to correct a factual misstatement caused by Respondent's use of a stolen identity. Carver has been aware of the proceeding and charges since at least the time when the Division first learned of Respondent's true identity, and was aware of the 2008 consent judgment, which he agreed to at the time. Respondent has not appeared in nor responded to this proceeding in any way. If the OIP is amended, it will be served on Respondent and he will be provided an opportunity, yet again, to contest the allegations and their legal effect. *James S. Tagliaferri*, Exchange Act Rel. No. 34-75820, 2015 WL 5139389, at *2 (Sept. 2, 2015).

III. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Commission grant its motion to amend the OIP to include Respondent's true identity and prior violations of federal securities laws and criminal conviction for the same conduct alleged in the OIP.

Dated: April 25, 2023

Respectfully submitted,

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Service List

Pursuant to Rules 150 and 151 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing, was served on each of the following, on April 25, 2023, in the manner indicated below.

By U.S. Mail

Robert L. Carver, Register No. 93674-509
(aka "Donald Howard")
MDC Los Angeles
Metropolitan Detention Center
P.O. Box 531500
Los Angeles, CA 90053

/s/ Marlea Furlong
Marlea Furlong

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DIVISION OF ENFORCEMENT'S INDEX OF ATTACHMENTS

<u>Attachment</u>	<u>Description</u>
Exhibit A	FBI Affidavit (<i>United States of America v. Robert Louis Carver</i> , 1:22-mj-02054-KBB-1, N.D.OH.), dated March 28, 2022
Exhibit B	Docket Sheet (<i>United States of America v. Robert Louis Carver</i> , 1:22-mj-02054-KBB-1, N.D.OH.), dated March 28, 2022
Exhibit C	<i>Robert L. Carver</i> , Securities Exchange Act Rel. No. 58423 (Aug. 25, 2008)
Exhibit D	Permanent Injunction, <i>SEC v. Carver, et al.</i> , 8:08cv627, Dkt. No 46 (C.D. Cal. Aug. 1, 2008)
Exhibit E	Draft Proposed Amended OIP as to Donald Howard (aka "Robert Carver")