

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20659**

**In the Matter of**

**HUGHE DUWAYNE  
GRAHAM,**

**Respondent.**

**DIVISION OF ENFORCEMENT'S  
RESPONSE TO THE COMMISSION'S  
ORDER DATED JANUARY 11, 2023  
AND STATUS REPORT**

The Division of Enforcement of the Securities and Exchange Commission (the "Division") respectfully submits this Brief pursuant to the Commission's January 11, 2023 Order and the Commission's February 16, 2023 Order. *See Hughe Duwayne Graham*, Exchange Act Rel. No. 96640 (Jan. 11, 2023); *Hughe Duwayne Graham*, Exchange Act Rel. No. 96942 (Feb. 16, 2023). The Commission's January 11, 2023 Order ordered the Division to file a brief regarding the Division's motion to amend the November 19, 2021 Order Instituting Proceedings ("OIP") against Respondent Hughe Duwayne Graham ("Graham" or "Respondent"). The Commission's February 16, 2023 Order ordered the Commission to file a status report concerning whether the Division still requests amendment of the OIP's third paragraph, and if it does, the Commission ordered the Division to (1) explain the reason for not responding to the Commission's January 11 Order; (2) explain why the Commission should not consider the Division's motion forfeited, and (3) attach the brief requested in the January 11 Order.

**I. The Division's Delay was Due to a Technical Issue, Which Was Recently Resolved.**

On or around December 21, 2022, the undersigned entered his appearance as counsel for the Division in this matter. Due to a technical issue with the undersigned's eFAP account, counsel for

the Division was unable to access filings in this matter and, as a result, was unaware of the Commission's January 11 Order and February 16 Order. Recently, the Division became aware of the Commission's previous two Orders in this matter and the undersigned then became aware of the underlying technical issue. After addressing the technical issue, the Division promptly filed this status report and the accompanying brief. The undersigned regrets any inconvenience caused by the circumstances described above.

## **II. The Division Renews Its Request to Amend the Order Instituting Proceedings.**

Pursuant to the Commission's Order dated January 11, 2023, the Division respectfully renews its motion to amend the OIP. As outlined in its August 25, 2022 motion and its November 8, 2022 supplemental motion, on or around August 20, 2022, the Division learned that Respondent had pled guilty to one count of conspiracy to commit securities fraud pursuant to 18 U.S.C. § 371 in *United States v. Collins, et al.*, Case No. 1:20-cr-00842 (N.D. Ohio) (the "criminal action"). On October 25, 2022, Respondent was sentenced in the criminal action to one year and one day in federal prison followed by three years of supervised release, a \$100 special assessment, and restitution in the amount of \$824,500.49, due jointly and severally with Respondent's co-defendants. Now that Respondent has been sentenced in the criminal action and for the reasons discussed in its motion to amend, the Division respectfully requests that the Commission grant its motion to amend the OIP to include Respondent's criminal conviction.

The Division respectfully requests that the Commission excuse the delay caused by the circumstances described above and not consider the Division's motion to amend the OIP as forfeited. While the Division regrets the delay, Respondent was not prejudiced by the Division's actions. Indeed, as set forth in the accompanying brief, Respondent failed to answer either the OIP or the Commission's April 4, 2022 order to show cause. Further, granting the motion will streamline the

proceedings. The Division's proposed amendment to Paragraph 3 of the OIP in this matter puts the facts in Paragraph 3, also as alleged in the Division's district court complaint, before the Commission. If Respondents defaults for a second time in this action, the proposed amendment to Paragraph 3 may allow the Commission to consider the facts set forth in that paragraph as deemed true, rather than simply alleged in the complaint, and the Commission may then determine the proceeding against Respondent upon consideration of the record. *Accord Clinton Maurice Tucker II*, Exchange Act Rel. No. 94208 (Feb. 9, 2022).

Pursuant to the Commission's February 16, 2023 Order, a brief regarding the Division's proposed amendment to the third paragraph of the OIP is attached hereto as **Attachment 1**.

Dated: March 8, 2023

Respectfully submitted,

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351 S. West Temple, Suite 6.100  
Salt Lake City, UT 84101  
(801) 524-5796

*Counsel for the Division of Enforcement*

**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 March 8, 2023, in the manner indicated below.

Vanessa Countryman, Secretary  
Office of the Secretary  
100 F. Street, N.E.  
Washington, DC 20549  
*Via eFAP*

Mr. Hughe Duwayne Graham  
[REDACTED]  
Riverside, CA [REDACTED]  
*Via USPS First Class Mail*

/s/ Michael E. Welsh  
Michael E. Welsh

# **Attachment 1**

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20659**

*In the Matter of*

*HUGHE DUWAYNE*  
*GRAHAM,*

*Respondent.*

**SUPPLEMENTAL BRIEF OF THE**  
**DIVISION OF ENFORCEMENT**  
**SUPPORTING AMENDMENT OF THE**  
**ORDER INSTITUTING**  
**PROCEEDINGS**

Pursuant to the Order of the Commission dated January 11, 2023, the Division of Enforcement (“Division”) hereby files this supplemental brief in support of its August 15, 2022 motion to amend the November 19, 2021 Order Instituting Proceedings (“OIP”) against Respondent Hughe Duwayne Graham (“Graham” or “Respondent”) and its supplemental motion to amend the OIP filed on November 8, 2022.

**ARGUMENT**

The facts relevant to this supplemental brief are set forth in the Division’s August 15, 2022 motion and November 8, 2022 supplemental motion to amend the OIP. In relevant part, in the course of preparing its motion for default and sanctions as to Respondent, counsel for the Division learned that, in March 2022, Respondent had pled guilty to one count of conspiracy to commit securities fraud pursuant to 18 U.S.C. § 371 in *United States v. Collins, et al.*, Case No. 1:20-cr-00842 (N.D. Ohio) (the “criminal action”), and was scheduled to be sentenced via Zoom on October 25, 2022. On August 15, 2022, the Division filed its motion to amend the OIP to include Respondent’s anticipated criminal conviction and to briefly postpone the proceedings until after

Respondent's sentencing. On August 30, 2022, the Commission granted the Division's motion to postpone the proceedings and ordered the Division to supplement its motion to amend the OIP by November 9, 2022 once Respondent had been sentenced. *See Hughe Duwaye Graham*, Exchange Act Rel. No. 95638 (Aug. 30, 2022).

On October 25, 2022, Respondent was sentenced in the criminal action to one year and one day in federal prison followed by three years of supervised release, a \$100 special assessment, and restitution in the amount of \$824,500.49, due jointly and severally with Respondent's co-defendants.

On November 8, 2022, the Division filed a supplemental motion to amend the OIP to include Respondent's criminal conviction, adding two proposed new paragraphs to the OIP accordingly. *See* Ex. 6 to the Division's November 8, 2022 Supp. Mot. (proposed amended OIP and redline). The legal precedent relevant to the proposed amendment to add Respondent's subsequent criminal conviction—which would provide an independent basis for remedial sanctions under Section 15(b)(6)(A) of the Exchange Act—is set forth in the Division's prior briefing.

The Commission's January 11, 2023 Order specifically asks the Division to provide briefing as to why the Commission should grant the Division's request to amend paragraph 3 of the OIP as follows:

3. ~~As alleged in The Commission's complaint, alleged that, from at least October 2017 to May 2019, Respondent, using the mails or other means or instrumentalities of interstate commerce, effected transactions in, or induced or attempted to induce the purchase and sale of, securities and received commissions while he was not registered with the Commission as a broker or dealer nor while he was associated with an entity registered with the Commission as a broker or dealer.~~

The Division's reason for proposing this revision is adjudicative economy. In at least one prior follow-on proceeding where the Division has moved for a default judgment against a respondent who failed to respond to the OIP, the Commission has stated:

The Division relies in part on the allegations of the OIP with respect to the injunctive action against [respondent] to support its request for sanctions. When a respondent defaults, the Commission may deem an OIP's allegations to be true. But the OIP here recounts the allegations of the Commission's complaint; it does not independently allege that [respondent] engaged in particular misconduct. Entering [respondent]'s default would not appear to permit the Commission to deem true the allegations of the Commission's complaint in the injunctive action.

*Clinton Maurice Tucker II*, Exchange Act Rel. No. 94208 (Feb. 9, 2022). The Division's proposed amendment to Paragraph 3 of the OIP in this matter puts the facts in Paragraph 3, also as alleged in the Division's district court complaint, before the Commission. If Respondent defaults for a second time in this action, the proposed amendment to Paragraph 3 may allow the Commission to consider the facts set forth in that paragraph as deemed true, rather than simply alleged in the complaint, and the Commission may then determine the proceeding against Respondent upon consideration of the record. Therefore, the Division submits that the proposed amendment efficiently presents these facts for the Commission's consideration.

Further, as with the proposed amendment to the OIP to add Respondent's criminal conviction, Respondent can claim neither surprise nor prejudice. The allegations in Paragraph 3 above were set forth in detail in the Commission's district court complaint filed over two years ago, and, except as to the minor wording change above, in the Division's original OIP, which Graham failed to answer.



## **CONCLUSION**

For the reasons set forth above, the Division respectfully requests the Commission grant its motion to amend the OIP as proposed in Exhibit 6 to its November 8, 2022 supplemental motion.

Dated: March 8, 2023

Respectfully submitted,

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*Counsel for the Division of Enforcement*

**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 March 8, 2023, in the manner indicated below.

Vanessa Countryman, Secretary  
Office of the Secretary  
100 F. Street, N.E.  
Washington, DC 20549  
*Via eFAP*

Mr. Hughe Duwayne Graham  
[REDACTED]  
Riverside, CA [REDACTED]  
*Via USPS First Class Mail*

/s/ Michael E. Welsh  
Michael E. Welsh