

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6172 / October 21, 2022

Admin. Proc. File No. 3-20086

In the Matter of
GARY EDWARD HAYNES

ORDER GRANTING MOTION TO AMEND THE ORDER INSTITUTING PROCEEDINGS

On September 28, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Gary Edward Haynes pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ Haynes was served with the OIP, but he did not file an answer. On June 9, 2021, the Division of Enforcement filed a motion requesting that the Commission find Haynes in default and bar him from the securities industry. On July 26, 2021, Haynes was ordered to show cause by September 9, 2021, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.² Haynes did not respond to the Division’s motion or the show cause order.

On August 18, 2022, the Division filed a motion to amend the OIP to reflect that Haynes was convicted of several counts of exploiting a vulnerable adult in violation of Michigan Compiled Laws (“MCL”) § 750.174a, rather than several counts of embezzlement from a vulnerable adult in violation of MCL § 750.174 as stated in the OIP.³

¹ *Gary Edward Haynes*, Advisers Act Release No. 5597, 2020 WL 5766754 (Sept. 28, 2020).

² *Gary Edward Haynes*, Advisers Act Release No. 5807, 2021 WL 3158259 (July 26, 2021).

³ *See Gary Edward Haynes*, Advisers Act Release No. 6080, 2022 WL 3210653 (Aug. 8, 2022) (order discussing this error); *Gary Edward Haynes*, Advisers Act Release No. 6007, 2022 WL 1288189 (Apr. 28, 2022) (same); *see also People v. Haynes*, 338 Mich. App. 392, 398-99 (Mich. Ct. App. 2021) (stating that Haynes had been convicted of several counts of “obtaining or using a vulnerable adult’s money or property through fraud, deceit, misrepresentation, coercion, or unjust enrichment (exploiting a vulnerable adult),” in violation of various provisions of MCL § 750.174a).

Rule of Practice 200(d)(1) provides that “[u]pon motion by a party, the Commission may, at any time, amend an order instituting proceedings to include new matters of fact or law.”⁴ Such amendments to OIPs “should be freely granted, subject only to the consideration that other parties should not be surprised, nor their rights prejudiced.”⁵ Amending the OIP to correct the statute and the shorthand name of Haynes’s conviction, facts of which the Commission could take official notice,⁶ will not surprise or prejudice Haynes. Haynes should already be aware of the details of his conviction, and he has made no filings in this proceeding, including in response to two orders that the Commission issued requesting briefs concerning the error in the OIP.⁷

Accordingly, IT IS ORDERED that the Division’s motion to amend the OIP is granted. The amended OIP is attached to this order.⁸ Service of this order and the amended OIP shall be made consistent with Rule of Practice 141(a).⁹ After the service of the amended OIP, the Division shall promptly file with the Office of the Secretary a record of service consistent with Rule of Practice 141(a)(3).¹⁰ Haynes shall file an answer to the allegations contained in the amended OIP within 20 days of service of the amended OIP.

⁴ 17 C.F.R. § 201.200(d)(1).

⁵ *Steven Wise*, Exchange Act Release No. 48850, 2003 WL 22827675, at *1 (Nov. 26, 2003) (cleaned up).

⁶ See Rule of Practice 323, 17 C.F.R. § 201.323 (providing that “[o]fficial notice may be taken of any material fact which might be judicially noticed by a district court of the United States”); *Anderson v. Wells Fargo Bank, N.A.*, 953 F.3d 311, 314 (5th Cir. 2020) (taking judicial notice of court judgments and opinions).

⁷ See *Wise*, 2003 WL 22827675, at *1 (amending OIP “to correct errors” regarding the respondent’s “real first name” and age because the amendment “will not result in surprise or prejudice to other parties”); see also *supra* note 3 (concerning orders discussing the error).

⁸ In addition to making the amendments requested by the Division, the amended OIP specifies that Haynes was 59 years old and incarcerated in Ionia, Michigan as of September 28, 2020, the date of the original OIP. The amended OIP also corrects typos by adding a period after the last sentence of the third allegation in Section II and changing “C.” to “B.” in Section III. Finally, the amended OIP omits the Commission’s request that parties send courtesy copies of filings to a particular email address that is no longer operational.

⁹ 17 C.F.R. § 201.141(a).

¹⁰ 17 C.F.R. § 201.141(a)(3).

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include e-filing requirements.¹¹

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

¹¹ *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81. And the amendments provide further requirements if a person cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices. *Id.* at 86,478-79.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20086

In the Matter of

Gary Edward Haynes,

Respondent.

**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. As of September 28, 2020, Haynes was 59 years old and 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, 14th 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

B. 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 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