

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97963 / July 21, 2023

Admin. Proc. File No. 3-20659

In the Matter of

HUGHE DUWAYNE GRAHAM

ORDER GRANTING MOTION TO AMEND THE ORDER INSTITUTING PROCEEDINGS

On November 19, 2021, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Hughe Duwayne Graham pursuant to Section 15(b) of the Securities Exchange Act of 1934 based on an injunction entered against him by the U.S. District Court for the Northern District of Ohio.¹ On April 4, 2022, the Commission issued an order requiring Graham to show cause why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and to otherwise defend this proceeding.² Graham has not filed an answer or a response to the show cause order.

On August 15, 2022, the Division of Enforcement filed a motion to amend the OIP to reflect that Graham pleaded guilty in March 2022, to one count of conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, in a non-parallel criminal proceeding in the U.S. District Court for the Northern District of Ohio, as well as a motion to postpone this proceeding pending Graham’s scheduled sentencing date. On August 30, 2022, we postponed the proceeding until after the scheduled sentencing date and directed the Division to supplement its motion to amend the OIP thereafter.³ On November 8, 2022, the Division filed its supplemental motion to amend the OIP, which included information about Graham’s now-completed sentencing. Graham has not responded to the Division’s original or supplemental motion to amend the OIP.

¹ *Hughe Duwayne Graham*, Exchange Act Release No. 93619, 2021 WL 5415352 (Nov. 19, 2021).

² *Hughe Duwayne Graham*, Exchange Act Release No. 94599, 2022 WL 1014869, at *1 (Apr. 4, 2022).

³ *Hughe Duwayne Graham*, Exchange Act Release No. 95638, 2022 WL 3757570, at *1 (Aug. 30, 2022).

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, including amendments that reflect “subsequent development[s],” “should be freely granted, subject only to the consideration that other parties should not be surprised nor their rights prejudiced.”⁵ Graham will not be surprised or prejudiced by the OIP’s addition of his recent conviction as a potential predicate under Exchange Act Section 15(b), as he should already be aware of the details of his conviction and sentencing.⁶ This addition also should not prejudice Graham, because he has made no filings in this proceeding, including any in response to the Division’s original or supplemental motion to amend the OIP.

The Division’s supplemental motion also requests that the Commission amend the OIP’s third paragraph to allege the truth of the allegations found in the Commission’s underlying civil complaint in the injunctive action against Graham.⁷ On January 11, 2023, the Commission issued an order requesting briefs from the parties regarding this proposed amendment of the OIP’s third paragraph.⁸ The Division filed a brief explaining that it requested amending the OIP’s third paragraph so that the Commission could deem the underlying civil complaint’s allegations to be true in the event that Graham defaults.⁹ Graham did not respond to the

⁴ 17 C.F.R. § 201.200(d)(1).

⁵ *James S. Tagliaferri*, Exchange Act Release No. 75820, 2015 WL 5139389, at *2 (Sept. 2, 2015) (quoting *Robert David Beauchene*, Exchange Act Release No. 68974, 2013 WL 661619, at *2 (Feb. 25, 2013)).

⁶ *See, e.g., Charles K. Seavey*, Advisers Act Release No. 1925A, 2001 WL 228030, at *2 (Mar. 9, 2001) (“The Division’s desire to have considered in these administrative proceedings the public interest implications of [the respondent’s] guilty plea to federal money laundering charges and his resulting sentence can neither surprise nor prejudice [the respondent].”).

⁷ The original OIP alleged only that the Commission’s civil complaint had made these allegations, not that the allegations were true. *See Graham*, 2021 WL 5415352, at *1 (providing that “[t]he Commission’s complaint” made certain allegations).

⁸ *Hughe Duwayne Graham*, Exchange Act Release No. 96640, 2023 WL 173346, at *1 (Jan. 11, 2023). Because the Division did not timely file the requested brief, the Division was directed to file a status report explaining why it had not filed the brief and explaining why the Commission should not consider the Division’s request to amend the OIP’s third paragraph to be forfeited. *Hughe Duwayne Graham*, Exchange Act Release No. 96942, 2023 WL 2069944, at *1 (Feb. 16, 2023). The Division filed a status report noting that, due to a technical issue, the assigned Division attorney could not access this case’s filings in eFAP, the Commission’s electronic filing system, and therefore the Division was unaware of the Commission’s order requesting briefs. Graham did not respond to the Division’s status report. Under the circumstances, we find that the Division has not forfeited its request to amend the OIP’s third paragraph.

⁹ *Cf. Clinton Maurice Tucker II*, Exchange Act Release No. 94208, 2022 WL 394644, at *1 (Feb. 9, 2022) (noting that “the OIP here recounts the allegations of the Commission’s complaint; it does not independently allege that [the respondent] engaged in particular misconduct,” and therefore “[e]ntering [the respondent’s] default would not appear to permit the

Division's brief or the Commission's order requesting additional briefs. We conclude that the Division's requested amendment to the OIP's third paragraph is appropriate because it adds "new matters of fact or law" to the OIP (i.e., the truth of the civil complaint's allegations).¹⁰ Graham should not be surprised or prejudiced that the Division believes that the civil complaint's allegations are true, nor should such an amendment to the OIP prejudice him given that he has made no filings in this proceeding.¹¹

Accordingly, IT IS ORDERED that the Division's motion to amend the OIP is granted. The amended OIP is attached to this order. Service of this order and the amended OIP shall be made consistent with Rule of Practice 141(a).¹² 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).¹³ Graham shall file an answer to the allegations contained in the amended OIP within 20 days of service of the amended OIP.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹⁴

By the Commission.

Vanessa A. Countryman
Secretary

Commission to deem true the allegations of the Commission's complaint in the injunctive action").

¹⁰ Rule of Practice 200(d)(1), 17 C.F.R. § 201.200(d)(1).

¹¹ *See, e.g., Tagliaferri*, 2015 WL 5139389, at *2.

¹² 17 C.F.R. § 201.141(a).

¹³ 17 C.F.R. § 201.141(a)(3).

¹⁴ *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. 86,464 (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. 3-20659

In the Matter of

**HUGHE DUWAYNE
GRAHAM,**

Respondent.

**AMENDED ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934 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 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Hughe Duwayne Graham (“Respondent” or “Graham”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent, age 63, is last known to reside in Riverside, California. From at least October 2017 to May 2019, Respondent was engaged in the business of effecting transactions in, or inducing or attempting to induce the purchase and sale of, securities and received transaction-based compensation. During the period relevant to this action, Respondent was neither registered with the Commission as either a broker or a dealer nor was he associated with a broker or dealer registered with the Commission.

B. ENTRY OF THE INJUNCTION

2. On November 12, 2021, a final judgment was entered against Respondent, permanently enjoining him from future violations of Section 15(a)(1) of the Exchange Act in the civil action entitled Securities and Exchange Commission v. Hughe Duwayne Graham, et al., Civil Action Number 1:20-CV-02505, in the United States District Court for the Northern District of Ohio.

3. As alleged in the Commission’s complaint, 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.

C. RESPONDENT'S CRIMINAL CONVICTION

4. On March 11, 2022, Respondent pleaded guilty to one count of conspiracy to commit securities fraud in violation of Title 18 United States Code, Section 371 before the United States District Court for the Northern District of Ohio, in United States v. Hughe Duwayne Graham, Crim. Case No. 1:20-cr-00842-3. On October 25, 2022, a judgment in the criminal case was entered against Respondent. He was sentenced 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.

5. The count of the criminal indictment to which Respondent pleaded guilty alleged, amongst other things, that, from in or around February 2014 through on or about August 18, 2020, Respondent engaged in a conspiracy to violate Title 15 United States Code, Sections 78j(b), 78(ff), and 78i(a)(1) and Title 17, Code of Federal Regulations, Section 240.10b-5, the objects of which included (1) defrauding investors; (2) obtaining investor monies and paying and receiving undisclosed commissions; (3) inflating the value of the common stock of Global Resource Energy, Inc., whose stock traded over-the-counter under the ticker "GBEN"; and (4) enriching the conspirators. According to the Indictment, Respondent solicited investors to purchase restricted and free trading GBEN stock, made material misrepresentations to investors concerning the GBEN stock and the use of investors' proceeds, and paid undisclosed commissions and kickbacks to himself and his co-conspirators for facilitating the sale of GBEN stock.

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 15(b) of the Exchange 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.

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 service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (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 electronically in administrative proceedings using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, www.sec.gov, at <http://www.sec.gov/eFAP>. Respondent also must serve and accept service of documents electronically. 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.