

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 100540 / July 16, 2024

Admin. Proc. File No. 3-20659

In the Matter of
HUGHE DUWAYNE GRAHAM

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

Grounds for Remedial Action

Injunction

Conviction

Respondent was permanently enjoined from violating the registration provisions of the federal securities laws and convicted of conspiracy to commit securities fraud. *Held*, it is in the public interest to bar respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

APPEARANCES:

Benjamin J. Hanauer for the Division of Enforcement.

On November 19, 2021, we instituted an administrative proceeding against Hughe Duwayne Graham pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ We amended the order instituting proceedings on July 21, 2023.² We now find Graham to be in default, deem the allegations of the amended order instituting proceedings to be true, and bar him from associating in the securities industry in any capacity and from participating in an offering of penny stock.

I. Background

A. The Commission issued the amended order instituting proceedings against Graham.

The amended order instituting proceedings (“OIP”) alleged that, between at least October 2017 and May 2019, Graham 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, even though he was not registered as a broker or dealer with the Commission or associated with a broker or dealer registered with the Commission.³ The OIP also alleged that, on November 12, 2021, in a civil action that the Commission brought against Graham, a federal district court entered a final judgment permanently enjoining Graham from future violations of Exchange Act Section 15(a)(1).

The OIP further alleged that, on March 11, 2022, Graham pleaded guilty to one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371. According to the OIP, the count of the criminal indictment to which Graham pleaded guilty alleged that, from around February 2014 through around August 18, 2020, Graham engaged in a conspiracy to violate Exchange Act Sections 10(b), 9(a)(1), and 32, and Exchange Act Rule 10b-5.⁴ Finally, the OIP alleged that, after accepting Graham’s guilty plea, a court sentenced him to one year and one day in federal prison and three years of supervised release, and ordered him to pay \$824,500.49 in restitution jointly and severally with his co-defendants.

The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. It directed Graham to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b).⁵ The OIP informed Graham that if he failed to answer, he may be deemed in default, the

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

² *Hughe Duwayne Graham*, Exchange Act Release No. 97963, 2023 WL 4682613 (July 21, 2023).

³ *Id.* at *3.

⁴ 15 U.S.C. §§ 78j(b), 78i(a)(1), 78ff; 17 C.F.R. § 240.10b-5.

⁵ 17 C.F.R. § 201.220(b).

allegations in the OIP may be deemed to be true as provided in the Rules of Practice, and the proceeding could be determined against him upon consideration of the OIP.⁶

B. Graham failed to answer the OIP, respond to an order to show cause why he should not be found in default, or respond to a motion for a default and sanctions.

Graham was properly served with the amended OIP on September 27, 2023, pursuant to Rule of Practice 141(a)(2)(i),⁷ but did not respond.⁸ On December 22, 2023, more than 20 days after service, the Commission ordered Graham to show cause by January 5, 2024, why it should not find him in default due to his failure to file an answer or otherwise defend this proceeding.⁹ The show cause order warned Graham that, if the Commission found him to be in default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against him upon consideration of the record. The order directed the Division of Enforcement to file a motion for entry of an order of default and the imposition of remedial sanctions, in the event that Graham failed to respond to the show cause order. Graham did not respond to the show cause order.

On April 4, 2024, the Division filed a motion requesting that the Commission find Graham in default and bar him from associating in the securities industry and from participating in an offering of penny stock. Graham did not respond to the Division's motion.

II. Analysis

A. We hold Graham in default and deem the OIP's allegations to be true.

Rule of Practice 155(a) provides that if a party fails to “answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding,” we may deem the party in default and “determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true.”¹⁰ Because Graham has failed to answer or respond to the show cause order or to the Division's motion, we find it appropriate to hold him in default and to deem the allegations of the OIP to be true. We base the findings that follow on the record, including the OIP and materials that the Division submitted with its original and supplemental motion to amend the

⁶ See Rule of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

⁷ 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by “handing a copy of the order to the individual”).

⁸ Graham also failed to respond to the original OIP that was issued in November 2021.

⁹ *Hughe Duwayne Graham*, Exchange Act Release No. 99233, 2023 WL 8877629 (Dec. 22, 2023).

¹⁰ 17 C.F.R. § 201.155(a); see also Rule of Practice 220(f), 17 C.F.R. § 201.220(f) (providing that “[i]f a respondent fails to file an answer required by this section within the time provided, such respondent may be deemed in default pursuant to” Rule of Practice 155(a)).

OIP,¹¹ as well as the final opinion and judgment in the Commission’s civil action against Graham, of which we take official notice.¹²

B. We find associational and penny stock bars to be in the public interest.

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from associating in the securities industry and from participating in any offering of a penny stock if it finds, on the record after notice and opportunity for hearing, that: (1) the person was either (a) enjoined from engaging in or continuing any conduct or practice in connection with acting as a broker or dealer or in connection with the purchase or sale of any security, or (b) convicted, within ten years of the commencement of the proceeding, of a crime that involves the conspiracy to commit an offense involving the purchase or sale of any security; (2) the person was associated with a broker or dealer at the time of the alleged misconduct; and (3) such a sanction is in the public interest.¹³

The record establishes the first two of these elements. First, Graham was permanently enjoined from engaging in a conduct or practice in connection with acting as a broker or dealer and in connection with the purchase or sale of a security.¹⁴ In addition, Graham was convicted

¹¹ These materials include the indictment, Graham’s plea agreement, the judgment, and the docket sheet from the criminal case.

¹² Amended Judgment Entry, *SEC v. Graham*, Case No. 1:20-cv-02505-PAB (N.D. Ohio Nov. 12, 2021), ECF No. 32; Amended Memorandum Opinion and Order, *Graham*, Case No. 1:20-cv-02505-PAB (N.D. Ohio Nov. 12, 2021), ECF No. 31; *see* Rule of Practice 323, 17 C.F.R. § 201.323 (“Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States[.]”); *see also* Fed. R. Evid. 201(b)(2) (authorizing federal district courts to “judicially notice a fact that is not subject to reasonable dispute because it[] . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”). Because the judgment in the civil action was entered based on Graham’s default, we do not give issue preclusive effect to the district court’s findings in the civil case. *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *2 (Apr. 23, 2015) (finding that because “none of the issues is actually litigated” in the case of a judgment entered by default, issue preclusion “does not apply with respect to any issue in a subsequent action” (quoting *Arizona v. California*, 530 U.S. 392, 414 (2000))).

¹³ 15 U.S.C. § 78o(b)(6)(A) (cross-referencing Section 15(b)(4)(B)–(C), 15 U.S.C. § 78o(b)(4)(B)–(C)); *see also id.* § 78o(b)(4)(B)(i) (discussing convictions involving, among other things, “the purchase or sale of any security” or “conspiracy to commit any such offense”); *id.* § 78o(b)(4)(C) (discussing injunctions from “from engaging in or continuing any conduct or practice” in connection with acting as a broker or dealer or “in connection with the purchase or sale of any security”).

¹⁴ *See* Exchange Act Section 15(a)(1), 15 U.S.C. § 78o(a)(1) (providing that it is unlawful for an unregistered broker or dealer “to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security”).

of conspiracy to commit a crime involving the purchase or sale of a security—conspiracy to commit securities fraud¹⁵—within ten years of the commencement of this proceeding.

Second, the OIP’s allegations, which we deem true, establish that from at least October 2017 to May 2019, Graham 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, without being registered as a broker or dealer or associated with a registered broker or dealer. In his plea agreement, Graham also admitted to acting as an unlicensed stockbroker by soliciting investors to purchase Global Research, Inc. (“GBEN”) stock from around 2018 through around August 18, 2020, and dividing up the proceeds of selling that stock with his co-conspirators. And Graham further admitted that he paid and received commissions and kickbacks for facilitating the sale of the stock. Accordingly, at the time of the alleged misconduct, Graham acted as an unregistered broker,¹⁶ and therefore was also a person associated with a broker.¹⁷

Thus, we need determine only if any remedial action is in the public interest. In doing so, we consider the egregiousness of the respondent’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition of the wrongful nature of his conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.¹⁸ Our public interest inquiry is flexible, and no one factor is dispositive.¹⁹ The remedy is intended to protect the trading public from further harm, not to punish the respondent.²⁰

¹⁵ See Exchange Act Section 10(b), 15 U.S.C. § 78j(b) (applying to conduct “in connection with the purchase or sale of any security”); Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5 (same).

¹⁶ 15 U.S.C. § 78c(a)(4)(A) (defining a “broker” as “any person engaged in the business of effecting transactions in securities for the account of others”); see also *Allan Michael Roth*, Exchange Act Release No. 90343, 2020 WL 6488283, at *3 (Nov. 4, 2020) (holding that an individual “acted as a broker” where he “actively solicited potential investors . . . , handled investor funds, and effected transactions for them” in the stock that he recommended they buy).

¹⁷ See, e.g., Exchange Act Section 3(a)(18), 15 U.S.C. § 78c(a)(18) (defining a “person associated with a broker” to include “any person directly or indirectly controlling” such broker); *Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at *3 (Jan. 23, 2017) (explaining that a person who acts as an unregistered broker meets the definition of a “person associated with a broker” in Exchange Act Section 3(a)(18) because they “necessarily control[] the activities of [their] brokerage business”).

¹⁸ *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981).

¹⁹ *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013).

²⁰ *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

We have weighed all of these factors and find that associational and penny stock bars are warranted to protect the investing public. Graham's misconduct was egregious, recurrent, and committed with a high degree of scienter. "Conspiracy to commit securities fraud requires specific intent."²¹ In his plea agreement, Graham admitted that between around 2018 and August 18, 2020, he participated in a conspiracy to commit securities fraud by soliciting members of the investing public to purchase inflated GBEN shares without disclosing material information, such as how proceeds from the sales would be used, as well as the fact that Graham and others were paid kickbacks and commissions for facilitating sales of the stock.²² Further, he admitted to "knowingly and intentionally" conspiring to "knowingly and willfully . . . use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities." He also admitted that he personally caused victim-investors to spend more than \$250,000 on GBEN stock while concealing material information. The overall conspiracy caused nine victims losses totaling \$824,500.49.

Because Graham failed to answer the OIP, respond to the order to show cause, or respond to the Division's motion for default and sanctions, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. Although his plea agreement may suggest that Graham has recognized the wrongful nature of his conduct, we find this consideration outweighed by the egregiousness of his misconduct, its recurrent nature, the degree of scienter involved, and Graham's failure to provide assures against future violations.²³ Indeed, Graham acted as a broker from at least October 2017 to August 2020, and he now has been released from prison. Thus, absent a bar, he may re-enter the securities industry or participate in an offering of penny stocks, which would present opportunities to violate the law again.²⁴

The Commission may impose bars to protect the investing public from a respondent's future actions by restricting access to areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm.²⁵ Here, all the factors that we consider demonstrate that Graham is unfit to be in the securities industry and that his participation in it in any capacity would pose a risk to investors.²⁶ We also note that Graham

²¹ *Michelle Morton*, Advisers Act Release No. 6094, 2022 WL 3587990, at *1, *4 (Aug. 22, 2022) (finding that respondent who was convicted of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371 had "acted with a high degree of scienter").

²² According to the OIP, Graham also violated the Exchange Act's registration requirements between at least October 2017 and May 2019, a slightly different period.

²³ *See Saul Daniel Suster*, Exchange Act Release No. 90401, 2020 WL 6680445, at *4 (Nov. 12, 2020) (finding that any mitigative effect of a guilty plea was outweighed by the other *Steadman* factors).

²⁴ *See id.*

²⁵ *Lawrence Allen DeShetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *3 (Nov. 21, 2019).

²⁶ *See James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding that the misconduct underlying the respondent's conviction

admitted in his plea agreement to participating in a criminal conspiracy that used manipulative stock trading techniques to artificially inflate a security's stock price as part of a securities fraud scheme, a type of misconduct that may be easier to execute in offerings of penny stocks.²⁷ Accordingly, we conclude that industry and penny stock bars are necessary to protect investors from the continuing threat that Graham poses and that it is in the public interest to bar Graham from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participation in any offering of penny stock.²⁸

An appropriate order will issue.

By the Commission (Chair GENSLER and Commissioners CRENSHAW, UYEDA and LIZÁRRAGA; Commissioner PEIRCE concurring in part and dissenting with respect to the imposition of a bar from participating in an offering of penny stock).

Vanessa A. Countryman
Secretary

demonstrated that respondent was unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors).

²⁷ See *Ronald S. Bloomfield*, Exchange Act Release No. 71632, 2014 WL 768828, at *22 (Feb. 27, 2014) (noting that penny stocks have been “recognized as presenting special risk of market manipulation, insider trading, and other illegal conduct”), *pet. for rev. denied*, 649 F. App’x 546 (9th Cir. 2016).

²⁸ See *Tagliaferri*, 2017 WL 632134, at *6 (imposing associational and penny stock bars where necessary to protect the public).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100540 / July 16, 2024

Admin. Proc. File No. 3-20659

In the Matter of
HUGHE DUWAYNE GRAHAM

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Hughe Duwayne Graham is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and it is further

ORDERED that Hughe Duwayne Graham is barred from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Vanessa A. Countryman
Secretary