UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102860 / April 14, 2025

INVESTMENT ADVISERS ACT OF 1940
Release No. 6874 / April 14, 2025

In the Matter of

CERTAIN OFF-CHANNEL COMMUNICATIONS
SETTLED ORDERS

ORDER DENYING MOTIONS TO MODIFY OR AMEND AND STAY SETTLED ORDERS

Between September 2023 and September 2024, the Securities and Exchange Commission issued sixteen separate orders instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order against the respondents listed in the Appendix ("Respondents"). The Commission issued these orders after accepting Respondents' signed offers of settlement, in which Respondents admitted to certain violations related to their employees' communications on personal devices ("off-channel communications") and agreed to comply with undertakings designed to remediate their violations (the "Settled Orders").[1]

Respondents now seek to (1) modify their Settled Orders, arguing that the Commission should "equalize" certain undertakings contained in Respondents' agreements with those contained in more recent Commission settlements; and (2) stay the effectiveness of their undertakings pending our consideration of their motions to modify. Specifically, Respondents request the following modifications to their Settled Orders:

- Remove a requirement that Respondents engage an independent compliance consultant for an iterative process over approximately two years, and replace that requirement with a one-time internal audit;
- Remove a requirement that Respondents report employee discipline regarding off-channel communications to the Commission for two years; and

[1] The Settled Orders are also listed in the Appendix.

- Remove the Commission's order that Respondents comply with their undertakings (which Respondents argue currently requires them to file a Membership Continuation Application with FINRA and submit to heightened FINRA supervision for six years).

The Division of Enforcement opposes Respondents' motions.

I. Respondents do not make the showing necessary to modify the Settled Orders.

The Commission and courts have long emphasized the "strong interest" in maintaining the finality of settlements.[2] Parties generally therefore must demonstrate "compelling" or "extraordinary" circumstances to modify a settled order.[3] Respondents have made no such showing.

Respondents' primary argument is that it would be "inequitable" to require them to comply with undertakings in their settlements—but not contained in subsequent (January 2025) settlements between the Commission and other parties. Respondents claim that although the later settlements involved similarly situated respondents, the terms of those orders were better than their own. Even if that were so, however, it would not be a basis for modifying Respondents' Settled Orders.

When it comes to Respondents' requests, the Federal Rules of Civil Procedure are instructive, even though they do not govern our administrative proceedings. Indeed, the Commission regularly looks to the Federal Rules to resolve questions not directly addressed by our Rules of Practice.[4] Here, most Respondents rely on Federal Rule 60(b)(5), which provides that a party may be relieved from a final judgment where "it is no longer equitable that the

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[2] *Michael H. Johnson*, Exchange Act Release No. 75894, 2015 WL 5305993, at *4 (Sept. 10, 2015); *see also Anita Foundations, Inc. v. ILGWU Nat. Ret. Fund*, 902 F.2d 185, 190 (2d Cir. 1990) (explaining that "courts are wary of disturbing settlements" because of the "strong public policy favoring settlements" and the "need for finality").

[3] *E.g.*, *Richard D. Feldmann*, Exchange Act Release No. 77803, 2016 WL 2643450, at *2 (May 10, 2016); *see also United States v. Bank of New York*, 14 F.3d 756, 759 (2d Cir. 1994) (holding that federal civil consent decree could be vacated only in "extraordinary circumstances").

[4] *See, e.g.*, *Gregory T. Bolan Jr.*, Exchange Act Release No. 85971, 2019 WL 2324336, at *3 n.22 (May 30, 2019) (referencing Rule 60(b) and federal cases in denying a motion to vacate a settlement); *Feldmann*, 2016 WL 2643450, at *3 n.24 (same regarding a motion to modify a settlement); *Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 WL 2117161, at *5 & n.18 (May 20, 2008) ("Under certain circumstances, the Federal Rules of Civil Procedure provide helpful guidance, such as when issues are not directly addressed by our Rules of Practice.").

judgment should have prospective application."[5] Caselaw interpreting Rule 60(b)(5) demonstrates why relief is not appropriate here.

As the Supreme Court has explained, a party seeking to modify a settled order under Rule 60(b)(5) on the ground that the order is "no longer equitable" must establish "that a significant change in circumstances warrants revision of the decree."[6] Modifications may be appropriate, for example, where new factual conditions "make compliance with the decree substantially more onerous"; when the consent decree becomes "unworkable because of unforeseen obstacles"; when enforcement of the decree without modification would be detrimental to the public interest[7]; or when there is a significant change in law.[8]

None of those circumstances is present here. Respondents do not argue, for example, that the undertakings to which they agreed had unforeseen consequences or obstacles.[9] Nor do they contend that new factual conditions have made compliance substantially more onerous, that continued enforcement of the terms would be detrimental to the public interest, or that there has been a significant change in applicable law.

Rather, the only arguably changed circumstance they identify is that later parties negotiated what Respondents believe to be better settlement terms. That is not the type of compelling circumstance that justifies altering the terms of Respondents' settlements.[10] The possibility that a later party in a similar position will receive different or more favorable terms

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[5] Some Respondents argue that the applicable standard is instead supplied by our Rules of Practice 100(c) and 200(d). As explained below, however, those rules are inapplicable to these circumstances. *See infra* notes 19-21 and accompanying text.

[6] *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992) (quoting Fed. R. Civ. P. 60(b)(5) and explaining that a party is not entitled to modification of a final judgment merely "when it is no longer convenient to live with the terms of a consent decree").

[7] The Court gave the example of a modification that was necessary to avoid pretrial release of violent felons. *Id.* at 384–85.

[8] *Id.* at 383–92 (noting that a "clarification in the law" does not "automatically" warrant modifying a consent decree because that "would undermine the finality of such agreements and could serve as a disincentive to negotiation of settlements").

[9] *See Mark S. Parnass*, Exchange Act Release No. 65261, 2011 WL 4101087, at *2-3 (Sept. 2, 2011) (explaining that "re-entry procedure" and "NASD's . . . processes" are not "unanticipated harms that would justify setting aside" a previously imposed Commission order).

[10] *Cf. United States v. Bownes*, 405 F.3d 634, 636 (7th Cir. 2005) (Posner, J.) ("By binding oneself [in a contract or plea agreement] one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one."); *Feldmann*, 2016 WL 2643450, at *2 (denying motion to modify because, by settling, respondent "accepted the risk" that litigating respondents might achieve a better result).

furthers and is not detrimental to the public interest. It gives government authorities flexibility and discretion to resolve future cases and has not, as a matter of experience, deterred persons from entering into settlements. The Commission has long rejected motions to modify or vacate settled orders simply because respondents seek to bring their terms in line with sanctions imposed on other parties.[11] Courts have done the same.[12]

We are also unpersuaded by Respondents' claims that they are, in effect, being penalized for settling earlier than other respondents. We do not understand this argument to have a different legal basis than those already discussed; the Respondents negotiated and made a choice to accept the terms of their orders, accepting the risk that comparable cases later could reach different outcomes. Respondents also provide no evidence that the Commission sought what the Respondents claim to be more severe terms because they settled earlier than other similar parties.

In addition, that other parties and the Commission reached different settlement terms does not establish that the terms in Respondents' agreements were punitive or contrary to the public interest. Indeed, Respondents themselves agreed to the undertakings to which they now object, and the Commission found those undertakings to be in the public interest.

In short, the decision to settle early carries both an inherent risk and potential benefit: Though the settling party must act with relatively less information than those that settle later, it avoids the time and expense of further negotiation and litigation.[13] Settlor's remorse—and a desire to revisit that risk calculus—does not justify upsetting a final, agreed-upon settled order.[14]

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[11] *See, e.g.*, *Feldmann*, 2016 WL 2643450, at *2-3 (rejecting respondent's argument that revising his settlement to match the result of litigating respondents would "more fairly and equitably reflect his liability"); *Johnson*, 2015 WL 5305993, at *4 (rejecting respondent's argument that modification "would make his sanction consistent with the sanctions imposed in other Regulation SHO cases").

[12] *See, e.g.*, *SEC v. NIR Grp., LLC*, No. 11-CV-4723, 2022 WL 900660, at *3 (E.D.N.Y. Mar. 28, 2022) (rejecting settling defendant's argument that "his equal protection rights were violated" because his co-defendant entered into a consent judgment first where no fine was levied); *cf. SEC v. Conradt*, 696 F. App'x 46, 47 (2d Cir. 2017) (rejecting defendant's argument that his consent judgment was "no longer equitable" because his guilty plea in parallel criminal proceeding had been vacated).

[13] *See Feldmann*, 2016 WL 2643450, at *2 n.19 (rejecting respondent's argument that settling "spared the Commission and its staff the burden of protracted proceedings" as a basis to modify settlement to match the result of litigating respondents).

[14] *See, e.g.*, *Cummings v. Greater Cleveland Reg'l Transit Auth.*, 865 F.3d 844, 846 (6th Cir. 2017) ("A settlor's remorse cannot alone justify abandoning [settled] judgments."); *Nemaizer v. Baker*, 793 F.2d 58, 60 (2d Cir. 1986) ("[A]n argument based on hindsight is not a ground upon which a court may grant Rule 60(b) relief.").

Otherwise, "the key virtue of settling cases—letting the parties move on after they each get some of what they want—would be lost."[15]

II. Respondents rely on inapposite or inapplicable Commission authority.

Respondents claim that Commission precedent and our Rules of Practice militate in favor of relief here. In particular, Respondents invoke the Commission's decision to modify a settlement in *Millennium Partners, L.P.* There, however, the Commission concluded only that, under the "particular circumstances" present there, it was "appropriate to grant" the motion to modify.[16] And, critically, those circumstances included (1) that the Division of Enforcement did not oppose modification, (2) that the respondent requested relief more than ten years after the original order, and (3) that the modification would sunset an otherwise indefinite obligation.[17]

Respondents briefly note other instances in which the Commission has modified a settlement, but those matters are similarly inapposite.[18] In none did the Commission suggest that it was modifying a settlement to "equalize" its terms with other, subsequently reached settlements. Rather, in every case, the Commission agreed to terminate indefinite undertakings after the respondent had complied with the terms for four or more years—and Division staff did not oppose the requests.

Several Respondents further argue that we should amend the Settled Orders based on our Rule of Practice 200(d)(1), which allows the Commission to "amend an order instituting proceedings to include new matters of fact or law." Respondents do not ask us to amend the orders instituting proceedings to include new matters of law or fact, however; instead, they ask that we eliminate some of the undertakings to which they agreed.[19] The Rule is therefore not grounds for relief.

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15 *Cummings*, 865 F.3d at 846.

16 *Millennium Partners, L.P.*, Exchange Act Release No. 78364, 2016 WL 3902753, at *2 (July 19, 2016).

17 *Id.* at *1.

18 Respondents cite to *Putnam Investment Management, LLC*, Advisers Act Release No. 3600, 2013 WL 1856026 (May 3, 2013); *Mass. Financial Services Co.*, Advisers Act Release No. 3312, 2011 WL 5401745 (Nov. 9, 2011); *Janus Capital Management LLC*, Advisers Act Release No. 3065, 2010 WL 3071930 (Aug. 5, 2010); *Inviva, Inc.*, Exchange Act Release No. 59674, 2009 WL 858463 (Apr. 1, 2009); *Franklin Advisers, Inc.*, Advisers Act Release No. 2906, 2009 WL 2149241 (July 20, 2009); and *M.D.C. Holdings, Inc.*, Exchange Act Release No. 39537, 1998 WL 23204 (Jan. 9, 1998).

19 *See* Rule of Practice 200(b)(3), (d)(1), 17 C.F.R. §§ 201.200(b)(3), (d)(1). Rule 200(d)(1) also does not apply because a final order must first be reopened before it can be amended. *See Daulatzai v. Maryland*, 97 F.4th 166, 178 (4th Cir. 2024) (applying analogous

The same Respondents also invoke Commission Rule of Practice 100(c), which provides that we may apply "alternative procedures" if doing "so would serve the interests of justice and not result in prejudice to the parties."[20] This rule is similarly inapposite. While it affords the Commission flexibility to specify alternative procedures for administrative proceedings, it does not give parties the right to substantive relief. This is especially true where, as here, granting the requested relief would undermine the compelling interest in the finality of settlements and thus not serve the interests of justice.[21]

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For the above reasons, we deny Respondents' motions to modify the Settled Orders. Because we deny Respondents' motions on the merits, we also deny their requests for stays and administrative stays.

Accordingly, it is ORDERED that Respondents' motions are denied.

By the Commission.

Vanessa A. Countryman
Secretary

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federal rules to require that plaintiffs seeking to file an amended complaint following final judgment first have the judgment reopened under Rule 60(b)).

[20] 17 C.F.R. § 201.100(c).

[21] *See, e.g., Michael Ross Turner,* Exchange Act Release No. 81693, 2017 WL 4222468, at *5 (Sept. 22, 2017) (declining to invoke Rule 100(c) when doing so would undermine finality).

Appendix

The respondents and settled orders at issue are:

- William Blair & Company, L.L.C., and William Blair Investment Management, LLC; AP File No. 3-21764; Exchange Act Release No. 98626, 2023 WL 6373152 (Sept. 29, 2023);
- Robert W. Baird & Co. Incorporated; AP File No. 3-21768; Exchange Act Release No. 98631, 2023 WL 6373155 (Sept. 29, 2023);
- Key Investment Services LLC and KeyBanc Capital Markets Inc.; AP File No. 3-21849; Exchange Act Release No. 99500, 2024 WL 517497 (Feb. 9, 2024);
- Oppenheimer & Co. Inc.; AP File No. 3-21852; Exchange Act Release No. 99503, 2024 WL 517500 (Feb. 9, 2024);
- Hilltop Securities Inc.; AP File No. 3-21993; Exchange Act Release No. 100697, 2024 WL 3816601 (Aug. 14, 2024);
- Piper Sandler & Co.; AP File No. 3-21994; Exchange Act Release No. 100698, 2024 WL 3816602 (Aug. 14, 2024);
- Osaic Services, Inc., and Osaic Wealth, Inc.; AP File No. 3-21997; Exchange Act Release No. 100701, 2024 WL 3816607 (Aug. 14, 2024);
- Apex Clearing Corporation; AP File No. 3-21998; Exchange Act Release No. 100702, 2024 WL 3816609 (Aug. 14, 2024);
- Truist Securities, Inc.; Truist Investment Services, Inc.; and Truist Advisory Services, Inc.; AP File No. 3-22000; Exchange Act Release No. 100703, 2024 WL 3816612 (Aug. 14, 2024);
- Raymond James & Associates, Inc.; AP File No. 3-22002; Exchange Act Release No. 100705, 2024 WL 3816617 (Aug. 14, 2024);
- RBC Capital Markets, LLC; AP File No. 3-22003; Exchange Act Release No. 100706, 2024 WL 3816619 (Aug. 14, 2024);
- Ameriprise Financial Services, LLC; AP File No. 3-22004; Exchange Act Release No. 100707, 2024 WL 3816622 (Aug. 14, 2024);
- LPL Financial LLC; AP File No. 3-22006; Exchange Act Release No. 100709, 2024 WL 3816629 (Aug. 14, 2024);
- Regions Securities LLC; AP File No. 3-22163; Exchange Act Release No. 101140, 2024 WL 4277324 (Sept. 24, 2024);
- Invesco Distributors, Inc. and Invesco Advisers, Inc; AP File No. 3-22165; Exchange Act Release No. 101141, 2024 WL 4277329 (Sept. 24, 2024);
- Stifel, Nicolaus & Company, Inc.; AP File No. 3-22168; Exchange Act Release No. 101144, 2024 WL 4277335 (Sept. 24, 2024).

Commissioner PEIRCE, dissenting:

Under the unique circumstances here, the Commission should take the unusual but warranted step of modifying the Settled Orders. The Commission refuses to do so. Accordingly, I dissent.

The Respondents do not satisfy the standard federal courts apply to requests for relief under Fed. R. Civ. P. 60(b)(5). Similarly, Respondents' motions to modify their respective Settled Orders to eliminate certain of the undertakings are ill-suited to proceed under Commission Rule of Practice 200(d)(1).[1] But our rules provide an avenue for relief. As the majority notes, Commission Rule of Practice 100(c) states that the Commission may order "alternative procedure[s]" if doing so "would serve the interest of justice and not result in prejudice to the parties." Additionally, Rule 100(c) provides that the Commission may order "that compliance with an otherwise applicable rule is unnecessary." If the Commission's rules and precedents require that, in the normal course, Respondents move to reopen the Settled Orders and satisfy Fed. R. Civ. P. 60(b)(5)'s demanding standard to obtain the requested modification, it is in the interest of justice to employ alternative procedures and to grant the motions to modify. Indeed, we appear to have done so on several past occasions.[2]

Between December 2021 and October 2024, the Commission's Off-Channel Communications enforcement sweep resulted in settlements with more than 100 firms and reaped $2 billion in penalties.[3] Respondents contend—and the Division of Enforcement does not dispute—that the terms on which most firms settled included nearly identical undertakings. Among other things, the typical undertakings[4] ordered the firms to:

- Engage a Compliance Consultant to conduct a comprehensive review of the firm's supervisory, compliance, and other policies regarding electronic communications and submit a detailed report to the firm and to the Commission;

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1 17 C.F.R. § 201.200(d)(1).

2 *Millennium Partners, L.P. et al.*, Rel. No. 34-78364, (July 19, 2016), available at https://www.sec.gov/files/litigation/opinions/2016/33-10112.pdf; *see also Millennium Partners, L.P. et al.*, Admin. Proc. File No. 3-12116, Motion to Modify Administrative Proceedings Sanctions, (filed June 13, 2016), available at https://www.sec.gov/files/litigation/apdocuments/3-12116-event-16.pdf. Neither Millennium Partners' motion nor the Commission's order granting the motion and awarding the requested relief cite any Rule of Practice or applicable legal standard governing the request for relief. Furthermore, Millenium Partners' motion lists five other instances where the Commission modified compliance obligations in settled, closed orders.

3 Press Release No. 2024-186, SEC Announces Enforcement Results for Fiscal Year 2024 (Nov. 22, 2024), available at https://www.sec.gov/newsroom/press-releases/2024-186.

4 *See, e.g.*, *Barclays Capital, Inc.*, Rel. No. 34-95919 (Sept. 27, 2022), available at https://www.sec.gov/files/litigation/admin/2022/34-95919.pdf; *Robert W. Baird & Co. Inc.*, Rel. No. 34-98631 (Sept. 29, 2023), available at https://www.sec.gov/files/litigation/admin/2023/34-98631.pdf.

- Adopt the Compliance Consultant's recommended changes to policies and procedures, subject to certain procedures if the firm believed any particular recommendations were unduly burdensome, impractical, or inappropriate;
- Require the Compliance Consultant to assess the firm's program to preserve electronic communications one year after the Compliance Consultant submitted its report to the firm and to the Commission;
- For two years following the entry of the Settled Order, report to the Commission instances where the firm imposed discipline on any employees who violated the firm's policies and procedures with respect to preservation of electronic communications; and
- Maintain for six years any records of compliance with the undertakings.

As Respondents point out, compliance with the undertakings is mandatory because the Commission's orders direct that they "shall comply."

The ongoing nature of the reporting and recordkeeping requirements in the undertakings imposes significant collateral consequences on Respondents. The violations trigger certain statutory disqualifications.[5] Those statutory disqualifications, in turn, render Respondents disqualified from FINRA membership.[6] To maintain their FINRA membership while the sanctions imposed in the order triggering the statutory disqualification are in effect, Respondents must file an application for continuing membership with FINRA's Department of Registration and Disclosure.[7] As part of the application and approval process, the Respondents are required to submit and adhere to a plan of heightened supervision, a process that imposes significant costs. One Respondent contends, for example, that the typical heightened supervision plan "require[s], among other things, costly and burdensome training, disclosures, and recordkeeping not otherwise required by the Commission's undertakings, with ongoing examination and supervision by FINRA for a period of six additional years."[8] Notably, the Division of Enforcement does not contest the assertion—made by nearly all the Respondents at issue here—that FINRA's heightened supervision plans impose costly obligations that go beyond the Commission's requirements in the undertakings.

With respect to the particular statutory disqualifications at issue here, FINRA only

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[5] *See* Exchange Act Section 3(a)(39)(F), 15 U.S.C. § 78c(a)(39)(F), defining "statutory disqualification" to include firms subject to orders imposed under Exchange Act Section 15(b)(4)(D) and (E), 15 U.S.C. § 78*o*(b)(4)(D) and (E).

[6] FINRA By-Laws, Art. III § 3 (stating that "members subject to disqualification under Section 4 [of Art. III]" may not continue in membership) and § 4 (specifying that disqualification under Exchange Act Section 3(a)(39) causes disqualification under FINRA's by-laws).

[7] FINRA Regulatory Notice 09-19 at 3-4 (effective June 15, 2009), available at https://www.finra.org/sites/default/files/NoticeDocument/p118466.pdf.

[8] *Key Investment Services and Keybanc Capital Markets Inc.*, Admin. Proc. File No. 3-21849, Respondents' Brief in Support of Motion to Modify Ordered Undertakings in Administrative Proceedings, Motion for Stay of Effectiveness of Undertakings, and Motion for Administrative Stay, at 4 (filed Jan. 30, 2025), available at https://www.sec.gov/files/litigation/apdocuments/3-21849-2025-01-30-motion.pdf.

requires a continuing membership application if the sanction is still in effect.[9] The "sanctions" are in effect only as to Respondents because (1) the Commission ordered compliance with the undertakings and (2) the ordered undertakings remain ongoing, at least for the two-year reporting period applicable to disciplinary actions resulting from employee violations of the firm's policies and procedures related to preservation of electronic communications and possibly for the entire six-year record retention period. As Respondents correctly note, the twelve settlements at the tail end of the Commission's Off-Channel Communications sweep do not include the same undertakings as the earlier settlements. Indeed, the undertakings in the January settlements are demonstrably less draconian and costly. For example, the undertakings in the last twelve settlements only require an "Internal Audit" conducted by the respondent, not retention of a compliance consultant, and do not require reporting of disciplinary actions taken against employees.[10] Most significantly, however, compliance with the undertakings is not *ordered*; rather, the respondents' compliance with the undertakings is *voluntary*. Because compliance is not ordered by the Commission, the "sanctions" are not in effect and no continuing membership application is required under FINRA's rules. In this way, the last resembles the first—compliance with the undertakings in the very first off-channel communications settlement likewise was voluntary.[11]

Even before the January 2025 settlements cited by Respondents, the Commission took different approaches to undertakings in settlements with firms caught up in the Off-Channel Communications sweep. For example, all the settlements with municipal advisors ordered the respondents to comply with certain undertakings, but those undertakings appear far less costly and lengthy than those imposed on Respondents.[12] Two of the six settling Nationally Recognized Statistical Rating Organizations ("NRSROs") had no undertakings, while the remaining four were ordered to comply with undertakings substantially similar to those in the Settled Orders at issue here.[13] Several investment advisers reached settlements that did not

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9 FINRA Regulatory Notice 09-19 at 4 and Attachment B; *supra* n.8.

10 *See PJT Partners LP*, Rel. No. 34-102167 (Jan. 13, 2025), available at https://www.sec.gov/files/litigation/admin/2025/34-102167.pdf; *Santander US Capital Markets, LLC*, Rel. No. 34-102171 (Jan. 13, 2025), available at https://www.sec.gov/files/litigation/admin/2025/34-102171.pdf.

11 *See J.P. Morgan Securities LLC*, Rel. No. 34-93807 (Dec. 17, 2021), available at https://www.sec.gov/files/litigation/admin/2021/34-93807.pdf. The undertakings in the J.P. Morgan settlement are nearly identical to those in Respondents' settlements, save for being voluntary rather than ordered.

12 *See Caine Mitter and Associates, Inc.*, Rel. No. 34-101039 (Sept. 17, 2024) available at https://www.sec.gov/files/litigation/admin/2024/34-101039.pdf (undertakings limited to requiring respondent to establish policies and procedures regarding preservation of electronic communications, conduct both initial and annual training, and certify compliance to the Commission); *see also* Press Rel. No. 2024-132, SEC Charges 12 Municipal Advisors with Recordkeeping Violations (Sept. 17, 2024), available at https://www.sec.gov/newsroom/press-releases/2024-132.

13 The four NRSROs with mandatory undertakings were *Moody's Investors Service, Inc.*, Rel. No. 34-100906 (Sept. 3, 2024), available at

impose any undertakings.[14] In contrast, investment advisers who were dual registrants with broker-dealer firms or affiliated with broker-dealer firms were ordered to comply with the same undertakings as the broker-dealer firms.[15]

The Commission's pre-2025 orders cite compliance efforts, cooperation, and remediation (or some combination of the three) as the reason for not ordering undertakings against two NRSRO firms and several investment adviser firms. Even if that explanation is sound in those proceedings, it does not appear to explain the differential treatment across firms that were similarly situated inasmuch as they committed the same underlying violation—failure to preserve communications as required by Commission rules—and lacked mitigating circumstances. Why are the undertakings nearly always ordered for firms pre-2025 and

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https://www.sec.gov/files/litigation/admin/2024/34-100906.pdf, *S&P Global Ratings, Inc.,* Rel. No. 34-100907 (Sept. 3, 2024), available at https://www.sec.gov/files/litigation/admin/2024/34-100907.pdf, *Fitch Ratings, Inc.*, Rel. No. 34-100903 (Sept. 3, 2024), available at https://www.sec.gov/files/litigation/admin/2024/34-100903.pdf, *and HR Ratings de México, S.A. de C.V.*, Rel. No. 34-100904 (Sept. 3, 2024), available at https://www.sec.gov/files/litigation/admin/2024/34-100904.pdf. Two NRSROs had voluntary undertakings. *See A.M. Best Credit Ratings, Inc.*, Rel. No. 100902 (Sept. 3, 2024), available at https://www.sec.gov/files/litigation/admin/2024/34-100902.pdf *and Demotech, Inc.*, Rel. No. 100905 (Sept. 3, 2024), available at https://www.sec.gov/files/litigation/admin/2024/34-100905.pdf.

[14] *See P. Schoenfeld Asset Management LP*, Rel. No. IA-6652 (Aug. 14, 2024), available at https://www.sec.gov/files/litigation/admin/2024/ia-6652.pdf; *Atom Investors, LP*, Rel. No. IA-6719 (Sept. 23, 2024), available at https://www.sec.gov/files/litigation/admin/2024/ia-6719.pdf; *Glazer Capital, LLC*, Rel. No. IA-6720 (Sept. 24, 2024), available at https://www.sec.gov/files/litigation/admin/2024/ia-6720.pdf; *Focused Wealth Management, Inc.* Rel. No. IA-6717 (Sept. 24, 2024), available at https://www.sec.gov/files/litigation/admin/2024/ia-6717.pdf.

[15] *See Goldman Sachs & Co., LLC*, Rel. No. 34-95922 (Sept. 27, 2022) (dual registrant), available at https://www.sec.gov/files/litigation/admin/2022/34-95922.pdf; *Credit Suisse Securities (USA), LLC*, Rel. No. 34-95926 (Sept. 27, 2022) (dual registrant), available at https://www.sec.gov/files/litigation/admin/2022/34-95926.pdf; *Deutsche Bank Securities, Inc., DWS Investment Management Americas, Inc., and DWS Distributors, Inc*., Rel. No. 34-95928 (Sept. 27, 2022) (affiliated adviser and broker-dealer), available at https://www.sec.gov/files/litigation/admin/2022/34-95928.pdf; *William Blair & Company, L.L.C. and William Blair Investment Management, LLC*, Rel. No. 34-98626 (Sept. 29, 2023) (affiliated adviser and broker-dealer), available at https://www.sec.gov/files/litigation/admin/2023/34-98626.pdf. The investment advisers were ordered to comply with the undertakings even absent violations of the Advisers Act. *See BofA Securities, Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc.*, Rel. No. 34-95921 (Sept. 27, 2022), available at https://www.sec.gov/files/litigation/admin/2022/34-95921.pdf; *see also Wells Fargo Securities, LLC, Wells Fargo Clearing Services, LLC, and Wells Fargo Advisors Financial Network, LLC,* Rel. No. 34-98076 (Aug. 8, 2023), available at https://www.sec.gov/files/litigation/admin/2023/34-98076.pdf

voluntary thereafter? Why must the broker-dealer firms that settled before January 2025 submit continuing membership applications to FINRA and be subject to costly heightened supervision plans while the broker-dealer firms that settled in January 2025 are not? And why is heightened supervision, which also imposes costs on FINRA, even necessary for the broker-dealer firms at all? The Commission waived its own set of disqualifications arising from the violation.[16] Moreover, none of the other firms—the standalone investment advisers, the municipal advisors, and the NRSROs—are subject to this requirement.

The Division of Enforcement offered no answers to these questions, so we are left with Respondents' uncontested argument that they are subject to costly and unnecessary additional supervision while other similarly situated firms are not. The majority is right that "[s]ettlor's remorse . . . does not justify upsetting a final, agreed-upon settled order," but something more significant is going on in these proceedings. When the Commission engages in enforcement sweeps that ensnare large numbers of firms across different parts of its regulatory ambit, it should endeavor to ensure both that the remedies it selects are commensurate to the conduct and that it imposes those remedies in a fair and even-handed manner across firms. When it settles on a remedial scheme that results in significantly greater costs to one category of firms, it should do so for well-explained and transparent reasons. This need for clear and transparent explanation is only heightened when the Commission chooses to change course in its application of the remedial scheme. Because that explanation is lacking here, I would grant the Respondents' motions and modify the Settled Orders to make the undertakings voluntary in all of them.

I respectfully dissent.

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[16] *See, e.g.,* Order Granting Waivers of the Disqualification Provisions of Rules 262(a)(4)(ii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act of 1933 and Rule 503(a)(4)(ii) of Regulation Crowdfunding, Rel. No. 33-11270 (Feb. 9, 2024), available at https://www.sec.gov/files/rules/other/2024/33-11270.pdf; Order Granting Waivers of the Disqualification Provisions of Rules 262(a)(4)(ii), 506(d)(1(iv)(B), and 602(c)(3) of the Securities Act of 1933 and Rule 503(a)(4)(ii) of Regulation Crowdfunding, Rel. No. 33-11298 (Aug. 14, 2024), available at https://www.sec.gov/files/rules/other/2024/33-11270.pdf.