UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF **GREGORY LEMELSON** **Respondent.**	)	ADMINISTRATIVE PROCEEDING FILE NO. 3-20828

RESPONDENT'S MOTION TO QUASH SUBPOENA

Respondent Fr. Emmanuel Lemelson (identified in the Order Instituting Administrative Proceedings as "Gregory Lemelson") (hereinafter, "Fr. Emmanuel")[1] hereby moves, pursuant to Rule 232 of the SEC's Rules of Practice, to quash the Administrative Law Judge's Subpoena to Produce Documents, dated May 16, 2025, issued to Clear Street, LLC.[2]

Lemelson will not repeat the background of this aged and ill-begotten "follow-on" proceeding, which he has explained in numerous prior pleadings over the past three years. Suffice it to repeat that a jury soundly rejected most of the SEC's underlying case, including the most incendiary charges alleging that Lemelson engaged in any fraudulent scheme, act, practice, or course of business. And the district court that oversaw the trial ultimately rejected the SEC's outlandish demands for seven-figure penalties, disgorgement, and interest, as well as the SEC's outlandish demand for a permanent, lifetime injunction. When the dust settled, all that remained of the SEC's case was three purportedly inaccurate sentences (or sentence fragments, two of which related to a pre-operational non-public company Lemelson never traded in, with the sole remaining comment not contained in any of his reports) cherry-picked from Lemelson's more

[1] Fr. Emmanuel will shortly be filing a motion to change the caption of this proceeding accordingly.
[2] Fr. Emmanuel notes his objection to the ALJ substantially curtailing the 15-day period that Rule 232 of the Rules of Practice typically allow for filing motions to quash.

than 55 pages of detailed written commentary and nearly an hour's worth of various online interviews—all occurring *more than a decade ago, in 2014*—in which he transparently (and presciently) exercised his First Amendment right to criticize a publicly traded corporation. Ironically, any investors who heeded Lemelson's public warnings about the company (notwithstanding the three alleged inaccuracies embedded therein) were handsomely rewarded, while those who did not suffered the severe financial consequences when the company subsequently lost over 80 percent of its market value.

This follow-on proceeding is predicated *exclusively* on the district court's limited, five-year injunction, which, in turn, the district court made clear was based almost entirely—if not entirely—on *one* allegedly inaccurate, publicly uttered statement, not contained in Lemelson's reports, about the company he traded in back in 2014. Neither the underlying district court case nor this follow-on proceeding has anything whatsoever to do with the arbitration between The Amvona Fund, a Delaware Limited partnership owned by over twenty limited partners, *none* of whom are parties to this proceeding, and its broker, with whom The Amvona Fund did not even have a relationship until *five years after* the events giving rise to underlying litigation.

Indeed, the subject matter of that arbitration, *which was brought by The Amvona Fund* against its prime broker, was a private disagreement between the Fund and the broker that took place six years after the statement giving rise to the injunction. Not surprisingly, the Division has proffered no intelligible explanation of how such private matters could conceivably be relevant to this follow-on proceeding, or why the subpoena that intrudes on the privacy interests of the owners of The Amvona Fund (of which Lemelson is not one) is justified.[3] Its vexatious

[3] The Division perfunctorily speculates that events that occurred in 2020 might salvage its failure to present any other proof of the so-called *Steadman* factors, but those factors focus almost entirely on recidivism (wholly absent here) and the purported egregiousness and degree of purported scienter involved in the actions *that led to the predicate injunction*, not dissimilar future events wholly unrelated both temporally and in terms of subject matter.

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pursuit of discovery into such patently irrelevant private and confidential matters constitutes harassment of the most odious kind. It is wholly inappropriate for a governmental agency to seek such material, and the Commission and its ALJ should not lend their official imprimatur to any of it.

Equally odious is the timing of the subpoena—sought well beyond the deadline the ALJ imposed on the parties and while two separate federal district courts are currently poised to decide whether the Division is entitled to identical discovery demanded of Lemelson himself and whether this follow-on proceeding is even lawful or constitutional. There is no legitimate basis for the Division, the ALJ, or the Commission to barrel ahead with dubious administrative processes while the exact same discovery demands—and the very legitimacy of this proceeding—are already pending before two federal courts. The Commission should have the humility to wait until the federal courts decide whether it is acting lawfully or lawlessly.

The subpoena to Clear Street is especially odious because it seeks material, from a third party, which is fully protected by the strict confidentiality firewalls that brokerage customers heavily rely upon when they participate in FINRA arbitration proceedings against their broker. That confidentiality is central to the success of FINRA's arbitration system, which the Commission has blessed. The whole purpose of FINRA's confidential arbitration proceedings is to prevent curious, third-party busybodies from accessing and rifling through the private financial papers and disputes that customers might otherwise be reluctant to submit to FINRA's arbitrators. To overcome that firewall of strict confidentiality, and out of respect for FINRA, such busybodies ought to be held to a highly exacting requirement to justify discovery requests

They also focus secondarily on recognition of wrongfulness of the conduct *that led to the injunction* and assurances against future securities law violations *similar to those that led to the injunction*. The Fund's 2020 disagreement with its subsequent prime broker cannot conceivably salvage the Division's lack of proof on any of these factors.

with the most compelling demonstration of relevance and of a genuine need to pry into the customer's private dispute. The Division has woefully failed to come anywhere close to justifying its discovery demand here for Lemelson, who was not even a party to the FINRA arbitration between Clear Street and the Fund.

The subpoena to Clear Street should be quashed. At the very least, the Commission should have the respect for the federal judiciary (not to mention FINRA's and The Fund, and it's non-party owners, interest in protecting the strict confidentiality protections promised by FINRA's arbitration system) to hold the subpoena in abeyance pending forthcoming rulings by the federal courts on whether this proceeding and a substantially identical discovery demand are even lawful and constitutional.

Respectfully submitted,

Fr. Emmanuel Lemelson

By his attorneys,

/s/ Douglas S. Brooks
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Dated: May 23, 2025

CERTIFICATE OF SERVICE

I, Douglas S. Brooks, do hereby certify that I served the foregoing document on counsel for the Commission, Marc Jones, Esq. and Alfred Day, Esq., by email on May 23, 2025.

/s/ Douglas S. Brooks
Douglas S. Brooks

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