UNITED STATES OF AMERICA
Before the
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21764

In the Matter of **William Blair & Company, L.L.C. and William Blair Investment Management, LLC,** **Respondents.**	**Respondents William Blair & Company, L.L.C. and William Blair Investment Management, LLC's Motion to Amend Order Instituting Proceedings**

Respondents William Blair & Company, L.L.C. ("William Blair Co.") and William Blair Investment Management, LLC ("WBIM," and with William Blair Co., "Respondents" or "William Blair"), by and through their undersigned counsel, Ropes & Gray LLP, hereby move pursuant to Rules 200(d)(1) and 154 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.154 and 201.200(d)(1), to amend the U.S. Securities and Exchange Commission's (the "SEC" or the "Commission") September 29, 2023 Order Instituting Administrative Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Order").

In support of Respondents' motion, pursuant to Rule 154(a) of the Commission's Rules of Practice, William Blair concurrently files a brief in support of the motion, in addition to related attachments.

OS Received 02/05/2025

Dated: February 5, 2025

Respectfully submitted,

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Respondents William Blair & Company, L.L.C. and William Blair Investment Management, LLC's Brief in Support of Motion to Amend Order Instituting Proceedings

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I. Introduction

Respondents William Blair & Company, L.L.C. ("William Blair Co.") and William Blair Investment Management, LLC ("WBIM," and with William Blair Co., "Respondents" or "William Blair"), by and through their undersigned counsel, Ropes & Gray LLP, hereby move pursuant to Rules 200(d)(1) and 154 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.154 and 201.200(d)(1), to amend the U.S. Securities and Exchange Commission's (the "SEC" or the "Commission") September 29, 2023 Order Instituting Administrative Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Order"). William Blair's Proposed Amended Order is attached hereto as Attachment A.

The Order was part of the Commission's three-year, industry-wide electronic communications sweep that has to date resulted in over 70 settlements and well over $2 billion in fines being imposed for violations of certain recordkeeping statutes and regulations (the "Electronic Communications Sweep"). William Blair seeks to amend the Order to align with the manner of resolution found in orders more recently entered by the Commission for twelve firms on January 13, 2025 (the "January 2025 Settlements"). *See Twelve Firms to Pay More Than $63 Million Combined to Settle SEC's Charges for Recordkeeping Failures*, SEC (Jan. 13, 2025), https://www.sec.gov/newsroom/press-releases/2025-6.

These settlements involved the same recordkeeping violations as the nearly 70 settlements that had come before, including William Blair's, but resolved those violations on significantly less prejudicial terms. The January 2025 Settlements marked a major departure in the SEC's approach in that they provided comparatively favorable settlement terms (*e.g.*, they do not require the settling firms to hire independent compliance consultants). These settlement

terms were not offered to William Blair even though it cooperated extensively with the government in resolving its matter, which started in the same month as the cases that were recently resolved yet concluded well over a year prior in September 2023. William Blair settled its case on the terms reflected in the Order because it understood that senior management of the SEC had determined that all recordkeeping cases would be resolved with the same terms as previous cases. The terms imposed on William Blair have severely prejudiced William Blair and its stakeholders as compared to the more favorable terms that the Gensler-led Commission approved in early January for nearly identical conduct.

Specifically, William Blair seeks to amend the Order in a targeted manner to: (i) remove all obligations related to the independent compliance consultant in favor of an internal audit review; (ii) remove the obligation to report certain discipline imposed on employees; and (iii) move any activities that William Blair will complete going forward to be voluntary undertakings. Each of these proposed modifications is entirely consistent with the January 2025 Settlements. For avoidance of doubt, William Blair is not seeking any reimbursement of, or reduction in, the $10 million civil monetary penalty, which it already paid in full compliance with the terms of the Order. The specific modifications sought by William Blair are instead designed to bring its settlement terms in line with the January 2025 Settlements, and are summarized below[1]:

September 29, 2023 Order	**Proposed Amended Order**
(i) Independent Compliance Consultant Shift to Internal Audit Review	
Section III., ¶8 The Commission staff uncovered Respondents' misconduct after commencing risk-based initiatives to investigate the use of off-channel and unpreserved	Modify the language as set forth below: The Commission staff uncovered Respondents' misconduct after commencing risk-based initiatives to investigate the use of off-channel and unpreserved communications at broker-

[1] A redline between the Proposed Amended Order (Attachment A) against the prior Order is also attached hereto as Attachment B.

communications at broker-dealers. William Blair and WBIM have initiated a review of their recordkeeping failures and begun a program of remediation. As set forth in the Undertakings below, William Blair and WBIM will retain an independent compliance consultant to review and assess William Blair's and WBIM's remedial steps relating to their recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.	dealers. William Blair and WBIM have initiated a review of their recordkeeping failures and begun a program of remediation. ~~As set forth in the Undertakings below, William Blair and WBIM will retain an independent compliance consultant to review and assess William Blair's and WBIM's remedial steps relating to their recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.~~
Section III., ¶32 (Independent Compliance Consultant) 32. Prior to this action, William Blair and WBIM enhanced their policies and procedures; increased training concerning the use of approved communications methods, including on personal devices; and began implementing changes to the technology available to employees. In addition, William Blair and WBIM have undertaken to: <u>Independent Compliance Consultant</u>. a. William Blair and WBIM shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by William Blair and WBIM. b. William Blair and WBIM will oversee the work of the Compliance Consultant. c. William Blair and WBIM shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall	Retain ¶32 itself, strike subsections a-c of ¶32, and add new ¶33 as set forth below:[2] 32. Prior to this action, William Blair and WBIM enhanced their policies and procedures; increased training concerning the use of approved communications methods, including on personal devices; and began implementing changes to the technology available to employees. In addition, William Blair and WBIM have undertaken to: ~~Independent Compliance Consultant.~~ ~~a. William Blair and WBIM shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by William Blair and WBIM.~~ ~~b. William Blair and WBIM will oversee the work of the Compliance Consultant.~~ ~~c. William Blair and WBIM shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described~~

[2] What were subsections c.i-vii of ¶32 will remain but will now be labeled as subsections a-g of ¶33.

include a comprehensive compliance review as described below. William Blair and WBIM shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant's conduct:	~~below. William Blair and WBIM shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant's conduct:~~ 33. Internal Audit. Within one hundred eighty (180) days of the entry of this Amended Order, Respondents shall require that their Internal Audit function[3] initiate a separate audit(s), to be completed within three hundred and sixty-five (365) days of the entry of this Amended Order, consisting of the following: [FN3] An independent compliance consultant may conduct the reviews and assessments described in Paragraph 33 in lieu of Respondents' Internal Audit function.
Section III., ¶32 d-j	Strike what were subsections 32 d-j of ¶32 in their entirety.
Section III., ¶33 (One-Year Evaluation)	Strike what was ¶33 in its entirety.
Section III., ¶35 (Internal Audit)	Strike what was ¶ 35 in its entirety.
Section III., ¶37 (Deadlines)	Strike what was ¶ 37 in its entirety.
Section III., ¶38 (Certification) William Blair and WBIM shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and William Blair and WBIM agree to provide such evidence. The certification and supporting material shall be submitted to Amy S. Cotter, Assistant Director, Division of Enforcement, Chicago Regional Office, Securities and Exchange Commission, 175	Modify the language as set forth below: William Blair and WBIM shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings~~,~~ and provide written evidence of compliance in the form of a narrative~~, and be supported by exhibits sufficient to demonstrate compliance~~. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification ~~and supporting material~~ shall be submitted to Amy S. Cotter, Assistant Director, Division of Enforcement, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604, or such other

W. Jackson Blvd., Suite 1450, Chicago, IL 60604, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.	person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings or within sixty (60) days of the Amended Order, whichever is later.
(ii) Reporting Employee Discipline	
Section III., ¶34 (Reporting Discipline Imposed)	Strike what was ¶34 in its entirety.
(iii) Compliance with Undertakings	
Section IV.D Respondents shall comply with the undertakings enumerated in paragraphs 32 to 38 above.	Strike what was Section IV.D in its entirety.

William Blair brings this Motion pursuant to Rules of Practice 154 and 200(d)(1), 17 C.F.R. §§ 201.154 and 201.200(d)(1), on the grounds that being denied an opportunity to reach a settlement on the terms afforded to the similarly situated firms that resolved analogous electronic communications matters in January 2025 is a new matter of fact and "subsequent development" that is fundamentally unfair and has severely prejudiced William Blair, and granting the requested modifications will not prejudice the Commission or the investing public. For these reasons, William Blair respectfully requests that the Commission grant this Motion.

II. Factual Background

On November 21, 2022, William Blair received document requests as part of the Commission's Electronic Communications Sweep (the "Inquiry"). From the outset of the Inquiry, William Blair cooperated in full and pursued a uniquely collaborative approach with the regional staff of the SEC's Chicago Office (the "Staff") that resulted in a settlement less than a year later in September 2023. William Blair's collaboration resulted in William Blair resolving

its inquiry *over a year prior to* other firms whose inquiries began before William Blair. For example, certain firms that first announced electronic communications inquiries in early November 2022 did not reach settlements until January 2025, but William Blair settled its Inquiry in September 2023. *See, e.g.*, Reuters Article (Nov. 9, 2022), https://tinyurl.com/36kctx22.

William Blair repeatedly sought to avoid an independent compliance consultant and other remedies found in earlier settlements but came to understand that the SEC's position, as established by the then-current enforcement leadership in the Washington D.C. office and required by the Gensler-led Commission, was that all firms would receive essentially the same settlements. William Blair's belief in the position was justified given that up through the date of William Blair's settlement, there were more than 25 settlements, all of which contained ordered remedies that included independent compliance consultants and a requirement to report to the SEC employee violations of recordkeeping policies and procedures. Even firms that self-reported their violations settled on these terms. However, the SEC's stance changed materially, as evidenced by the less prejudicial settlement terms provided to the January 2025 cohort of firms. This shift in approach has significantly impacted William Blair in a negative and unfair manner.

William Blair's Order requires the firm to retain, at its own expense, an independent compliance consultant to conduct a "comprehensive compliance review" related to various aspects of William Blair's electronic communications compliance program, including policies and procedures, training, surveillance, technological solutions, and disciplinary framework. William Blair has already retained this consultant and expects to incur substantial expense for these services. Per the terms of the Order, the consultant must submit to the Commission two

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reports. In compliance with the terms of the Order, William Blair submitted the first such report to the Commission on April 29, 2024. This 33-page report contained a comprehensive assessment of William Blair's compliance program as well as certain findings that William Blair has addressed by implementing certain compliance enhancements. These enhancements were completed in August of 2024. William Blair is currently preparing to initiate the process that will result in the consultant submitting to the Commission the "One-Year Report." That work is expected to begin within the next month. The Order also requires William Blair to report to the Commission for a period of two years any discipline imposed on employees for violations of William Blair's policies regarding the preservation of electronic communications.

Separately, because the Order asserts a willful violation and failure to supervise under Exchange Act Section 15(b) and imposes, via Section IV.D, ongoing undertakings that are "still in effect," William Blair has been working with the Financial Industry Regulatory Authority ("FINRA") to complete a continuing membership application. *See* FINRA Regulatory Notice 09-19 (Apr. 9, 2009) ("With respect to disqualifications arising solely from findings specified in Exchange Act Section 15(b)(4)(D) or (E) by the SEC . . . a member shall file [a continuing membership application] with RAD ***if the sanction is still in effect*** . . ") (emphasis added); *see also Frequently Asked Questions on FINRA's Eligibility Proceedings for Firms Participating in the SCSD Initiative*, FINRA (last visited Feb. 5, 2025), https://www.finra.org/rules-guidance/oversight-enforcement/decisions/scsd-eligibility-faq ("For disqualifications involving willful violations of the federal securities laws, FINRA typically requires its member firms to file Form MC-400A [a continuing membership application] **only if** the sanction is still in effect.") (emphasis in original). In connection with this process, FINRA has requested that William Blair consent to a heightened plan of supervision. This heightened plan of supervision would impose

for several years additional requirements beyond those contained in the Order, and well beyond the requirements in the January 2025 Settlements.

During the Inquiry, William Blair understood that certain aspects of the Order were non-negotiable, including the ordered remedy requiring the engagement of an independent compliance consultant, as they were standard features of the Electronic Communications Sweep as determined by leadership in the Division of Enforcement. On this basis, William Blair negotiated in good faith to resolve the matter on the terms offered by the Staff. However, the Commission recently approved a series of radically different and less onerous settlements for similarly situated firms.

In a marked departure from the Order and the nearly 70 settlements that came before January 2025, the January 2025 Settlements do not require respondents—some of the largest financial institutions in the world—to comply with *any* undertakings. In contrast to nearly all prior settlements, the January 2025 Settlements do not include, in Section IV, language ordering that respondents comply with various enumerated undertakings.[3] The requirement to retain an independent compliance consultant, which William Blair has already expended tremendous resources towards, was struck entirely and replaced by a narrower wholly internal review that does not require any reports to be submitted to the SEC. The January 2025 Settlements likewise omit the requirement that respondents report to the Commission any discipline for employee violations of firm policies regarding the preservation of electronic communications, much less for a period of two years as required in William Blair's Order. Further, the broker-dealers in the

[3] Of the nearly 70 settlements before January 2025, we have found just one that does not include the Section IV requirement to comply with the undertakings. *See* Order Instituting Administrative Cease-and-Desist Proceedings (J.P. Morgan), Exchange Act Release No. 93807 (Dec. 17, 2021).

January 2025 Settlements are not required under FINRA's rules to complete a continuing membership application because they are not subject to any sanctions "still in effect" and, therefore, are not required to adhere to onerous heightened supervision plans such as the one that FINRA is seeking to impose on William Blair.

While William Blair is not seeking to modify the $10 million civil monetary penalty, which it has already paid in full, it is worth noting that the firms settling as part of the January 2025 Settlements will pay drastically lower penalties on a relative basis. William Blair understood that firm size was an important factor in determining the penalty amount. *See Remarks at SEC Speaks 2024*, SEC (Apr. 3, 2024), https://www.sec.gov/newsroom/speeches-statements/sanjay-wadhwa-sec-speaks-2024-04032024. However, the fines imposed on the firms included in the January 2025 Settlements suggest that was not the case.

Despite settling for the same violations as William Blair, the firms settling in January 2025 were afforded drastically less prejudicial settlement terms that were not made available to William Blair. *Compare* Order, ¶ 21 ("Overall, these personnel sent and received numerous off-channel communications . . ."), *with* Order Instituting Administrative Cease-and-Desist Proceedings (Santander), Exchange Act Release No. 102171 (Jan. 13, 2025), ¶ 19 ("Overall, personnel sent and received numerous off-channel communications . . ."). Notwithstanding its uniquely collaborative approach with the Staff that led to an accelerated resolution of the Inquiry, William Blair was offered more prejudicial terms.

III. Argument

The Commission should amend the Order in accordance with William Blair's request under Rule of Practice 200(d)(1), which allows the Commission to amend an order instituting proceedings "to include new matters of fact or law." 17 C.F.R. § 201.200(d)(1) ("Upon motion by a party, the Commission may, at any time, amend an order instituting proceedings to include

new matters of fact or law."). The Commission has stated that such amendments should be "freely granted, subject only to the consideration that other parties should not be surprised, nor their rights prejudiced." Rule of Practice Comment (d) to Rule 200, 60 Fed. Reg. 32738, 32757 (June 23, 1995) (citing *In the Matter of Carl L. Shipley*, Release No. 419 (June 21, 1974)). "Where amendments to an order instituting proceedings are intended . . . to conform the order to the evidence or to take into account subsequent developments which should be considered in disposing of a proceeding . . . the Commission has authority to amend the order." 60 Fed. Reg. at 32757.

This permissive approach to granting modifications, particularly in the face of unfair treatment, is consistent with Rule of Practice 100(c)'s general directive that "[t]he Commission, upon its determination that to do so would ***serve the interests of justice*** and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary." 17 C.F.R. § 201.100(c) (emphasis added); *see also* Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission, 69 Fed. Reg. 13166, 13169 (Mar. 18, 2004) (explaining that Rule 100(c) was being adopted to "make explicit the Commission's authority to order a variation . . . based on the Commission's determination that to do so would serve the interests of justice."). The Commission's wide latitude to modify existing orders is further supported by its ability to, under Rule of Practice 400, 17 C.F.R. §201.400, "on its own motion, direct that any matter be submitted to it for review . . . ."

There is ample precedent that weighs in favor of the Commission granting William Blair's motion to amend the Order to bring the Order in line with similarly situated respondents. For example, in a prior sweep that the Commission previously conducted relating to improper

market-timing and late trading behavior, several firms settled with the Commission and agreed to various undertakings. *See* SEC, *Performance and Accountability Report (2005)* at 37 (describing the Commission's "risk-targeted examination sweeps" in 2005 for assessing "compliance problems associated with market timing and late trading."). However, the settled orders evolved over time and firms subject to prejudicial undertakings as compared to similarly situated respondents who later settled on modified terms sought to align their undertakings with those of similarly situated firms. *See, e.g.*, *In the Matter of Millenium Partners et al.*, Release No. 34-78364 at 2 (July 19, 2016) (recognizing that the respondent in that matter had "support[ed] its request by noting that . . . [the Commission has, among other things,] agreed to eliminate similar undertakings in other administrative proceedings related to market timing and other actions."). The Commission found "it appropriate to grant [the respondent's] motion" in such cases. *Id.*

As is the crux of William Blair's request here, the respondents in the market timing actions were relieved of their obligations relating to compliance consultants. *See, e.g.*, *In the Matter of Inviva, Inc. & Jefferson Nat'l Life Ins. Co.*, Release No. 9021 at 2 (Apr. 1, 2009) (granting amendment of an order to remove the requirement that a third party conduct a compliance review every other year); *In the Matter of Franklin Advisers, Inc.,* Release No. 2906 at 2 (July 20, 2009) (granting an amendment to "relieve [the firm] of the obligation to continue to have a third party periodically review its compliance controls."); *In the Matter of Putnam Inv. Mgmt.,* Release No. 3600 at 2 (May 3, 2013) (granting amendment of an order to remove various ongoing obligations, including to "undergo a compliance review by a third party at least once every other year.").

In this case, the "subsequent development" is the Commission's willingness to settle the same violations on drastically less prejudicial terms that were not made available to William

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Blair. This type of unfair and disparate treatment of similarly situated respondents raises concerns similar to those that have been addressed in the courts. *See*, *e.g., Gupta v. S.E.C.*, 796 F. Supp. 2d 503, 514 (S.D.N.Y. 2011) (denying SEC's motion to dismiss plaintiff's equal protection claims on the grounds that "there is already a well-developed public record of [plaintiff] being treated [by the SEC] substantially disparately from 28 essentially identical defendants . . ."). William Blair's proposed modifications simply seek to place William Blair in the same position as the firms that settled recordkeeping violations in January 2025. Despite cooperating extensively with the Staff to resolve the same recordkeeping violations at issue in the January 2025 Settlements, William Blair is being forced to comply with onerous conditions that other firms are not. This plainly does not "serve the interests of justice."

There is no meaningful difference between the nature of William Blair's recordkeeping violations and the other firms' conduct. A comparison of the Order to the January 2025 Settlements confirms this. But William Blair's cooperation throughout the Inquiry militates in favor of William Blair being afforded an opportunity to settle on the same terms as the firms settling in January 2025. The Commission has highlighted the importance of cooperation in the context of the Electronic Communications Sweep. For example, in April 2024, the SEC recognized that in the context of the Electronic Communications Sweep "[f]irms that do not self-report can still receive credit based on their cooperation with ENF staff during our investigation." *See Remarks at SEC Speaks 2024*, *supra*. William Blair's collaborative approach from the outset enabled the Staff to resolve the inquiry in less than a year. Many of the settling firms took nearly twice as long to reach a resolution, yet clearly benefited from their delay.

William Blair's requested modifications will not prejudice the Commission or the investing public. As to the Commission, these are settled administrative proceedings, and thus

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there are no upcoming hearing or hearing-related deadlines that will be impacted. Additionally, William Blair has demonstrated its clear commitment to abiding by its obligations under the Order by timely paying its $10 million civil penalty and implementing nearly six months ago a series of compliance enhancements as recommended by its independent compliance consultant. Given this latter step, William Blair is exceedingly well positioned to comply with its recordkeeping obligations on a go-forward basis. There is nothing to indicate that William Blair would not comply with the Order if modified in accordance with its request.

William Blair's requested modifications would also not prejudice other parties' rights. To the contrary, a denial of the request to amend the Order would severely prejudice William Blair's stakeholders as they would ultimately incur the substantial cost associated with the independent compliance consultant as well as indirect costs associated with FINRA's proposed heightened plan of supervision.

IV. Conclusion

For the foregoing reasons, William Blair respectfully requests that the Commission amend the Order as requested.

Dated: February 5, 2025

Respectfully submitted,

/s/ R. Daniel O'Connor

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Counsel for Respondents William Blair & Company, L.L.C. and William Blair Investment Management, LLC

CERTIFICATE OF SERVICE

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & 201.151, I certify that I filed this document using the eFAP system; I further certify that, on **February 5, 2025,** a true and correct copy of **Respondents William Blair & Company, L.L.C. and William Blair Investment Management, LLC's Motion to Amend Order Instituting Proceedings** was served via electronic mail on the following:

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Counsel for Respondents William Blair & Company, L.L.C. and William Blair Investment Management, LLC

CERTIFICATE OF COMPLIANCE

In accordance with Rule of Practice 151(e), 17 C.F.R. § 201.151(e), I certify that on February 5, 2025, I have omitted any sensitive personal information, as required by Rule of Practice 151(e)(3) from this filing.

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WILLIAM BLAIR'S INDEX OF ATTACHMENTS

Attachment	Description
A	William Blair's Proposed Amended Order
B	Redline between the Proposed Amended Order (Exhibit A) against the Order, dated September 29, 2023