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 Stay Implementation of 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 Rule 401, 17 C.F.R. § 201.401, of the Commission's Rules of Practice to stay the implementation of Paragraphs 8, 32a-j, 33, 34, 35, 37, and 38, as well as Section IV.D of 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, 17 C.F.R. § 201.154, William Blair concurrently files a brief in support of the motion.

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Dated: February 5, 2025

Respectfully submitted,

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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 Rule 401 of the Commission's Rules of Practice, 17 C.F.R. § 201.401, to stay the implementation of Paragraphs 8, 32a-j, 33, 34, 35, 37, and 38, as well as Section IV.D of 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 a separate motion, William Blair seeks to amend the Order under Rules of Practice 154 and 200(d)(1), 17 C.F.R. §§ 201.154 and 201.200(d)(1) (the "Motion to Amend"), which, if granted, would significantly alter William Blair's obligations under the Order and render certain of those obligations moot. William Blair is currently obligated to comply and has complied in full with the Order to date. For example, per the Order William Blair's independent compliance consultant must complete and submit to the Commission two reports, the first of which was completed and submitted on April 29, 2024. This 33-page report contained a comprehensive assessment of William Blair's compliance program with respect to recordkeeping as well as certain findings that William Blair has addressed by implementing certain compliance enhancements. This remediation was completed in August of 2024. William Blair has incurred substantial expense to date on its compliance consultant and under the current Order, William Blair is required to continue to dedicate considerable financial and personnel resources to fulfill its obligations. If the Motion to Amend is granted, which we respectfully suggest is likely,

several obligations under the Order would be rendered moot, including the requirement that William Blair continue to retain an independent compliance consultant and complete a second report, the due date for which is fast approaching. Without a stay, William Blair and its stakeholders would be forced to incur substantial costs to comply with obligations that may no longer be in force.

William Blair brings this Motion to stay the Order, pursuant to Rules of Practice 154 and 401, 17 C.F.R. §§ 201.154 and 201.401, until the Commission issues a decision on William Blair's Motion to Amend on the grounds that: (i) William Blair is likely to succeed on the merits of its motion; (ii) William Blair, and its stakeholders, are likely to suffer irreparable harm without a stay; (iii) no other party will suffer harm, let alone substantial harm, as a result of the stay; and (iv) the stay would serve the public interest.

II. Factual Background

On November 21, 2022, William Blair received document requests (the "Inquiry") as part of the Commission's three-year, industry-wide electronic communications sweep (the "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. 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 Regional Office (the "Staff") that resulted in a settlement less than a year later in September 2023. William Blair's collaboration resulted in the firm resolving its inquiry *over a year prior to* other firms whose inquiries began *before* William Blair. For example, certain firms which first announced electronic communications inquiries in November 2022 (before William Blair received its Inquiry), did not reach settlements until January 2025, while 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 understood that the SEC's position, as established by 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.

As set forth in its Motion to Amend, William Blair seeks to modify 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. For example, the January 2025 Settlements did not require the settling firms to hire independent compliance consultants nor did they contain any requirement to report to the SEC employee violations of recordkeeping policies and procedures. 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," the Financial Industry Regulatory

Authority ("FINRA") has requested that William Blair consent to a heightened plan of supervision. This heightened plan of supervision would impose additional requirements beyond those contained in the Order, and well beyond the requirements in the January 2025 Settlements. However, the broker-dealers in the January 2025 Settlements were 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.

William Blair's Motion to Amend is brought on the grounds that being denied an opportunity to reach a settlement on the terms afforded to the similarly situated firms that resolved analogous electronics 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 its stakeholders, and granting the requested modifications will not prejudice the Commission or the investing public. William Blair is simply seeking to receive the same treatment that was afforded to the firms that settled nearly identical recordkeeping matters in January 2025.

If William Blair's Motion to Amend is granted, the Order would, consistent with the January 2025 Settlements, materially alter William Blair's obligations by: (i) removing all obligations related to the independent compliance consultant in favor of an internal audit review; (ii) removing the obligation to report certain discipline imposed on employees; and (iii) moving any activities that William Blair will complete going forward to be voluntary undertakings. *See* Motion to Amend at 3-5 (including a chart summarizing the proposed changes to the Order).

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III. Argument

Pending the Commission's decision on whether to amend the Order, the Commission should stay the implementation of the Order pursuant to its authority under Rule of Practice 401(c), 17 C.F.R. § 201.401(c). "In deciding whether to grant a stay, the Commission traditionally applies the following four-factor test: it considers (i) the likelihood that the moving party will eventually succeed on the merits of [its case]; (ii) the likelihood that the moving party will suffer irreparable harm without a stay; (iii) the likelihood that another party will suffer substantial harm as a result of a stay; and (iv) a stay's impact on the public interest." *In the Matter of the Application of Bloomberg L.P. for Rev. of Action Taken by the Consol. Tape Ass'n in Its Role as a Registered Sec. Information Processor,* Release No. 83755 at 10-11 (July 31, 2018). Importantly, "not all four factors must favor a stay for a stay to be granted." *In the Matter of Scottsdale Capital,* Release No. 34-83783 at 3 (Aug. 6, 2018). "The first two factors are the most critical," although a stay is warranted even if a party has not satisfied the first factor, so long as it has raised "serious questions going to the merits" and "demonstrates irreparable harm that decidedly outweighs any potential harm to the stay opponent if a stay is granted." *Id.* In any case, William Blair easily satisfies all four factors.

First, as fully set forth in the Motion to Amend, William Blair is likely to succeed on the merits. William Blair's motion is based on the fundamental unfairness and prejudice that has flowed from the Commission approving settlements in January 2025 on vastly less prejudicial terms that were not made available to William Blair, despite William Blair's unique cooperation. Per Rule of Practice 201(d), the Commission may amend orders to remedy such prejudice brought by changes in circumstance. *See* 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 in the past granted similar amendments to orders such as

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those requested by William Blair (*e.g.*, amendments that have significantly modified ongoing compliance consultant obligations). *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 [similar misconduct]."); *see also 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."). Given the Commission's clear authority to amend orders and the significant shift in approach represented by the January 2025 Settlements, which diverged from nearly 70 prior electronic communications settlements, William Blair believes it is likely to succeed on the merits.

Second, William Blair will suffer irreparable harm without a stay. As noted, William Blair is currently in the process of dedicating significant financial and personnel resources to fulfill several obligations under the Order. Most notably, William Blair's independent compliance consultant must complete a *second* comprehensive evaluation of William Blair's compliance program as it relates to electronic communications and recordkeeping. While William Blair requested that the Staff grant a modest extension of this deadline pursuant to their authority in Paragraph 37 of the Order, the Staff was unable to offer an extension. William Blair expects to incur significant expense to complete this work, which is expected to begin within the next month. If the Commission grants the Motion to Amend, these obligations would be rendered moot but the resources used to comply with the obligations would not be recoverable.

Third, no party would suffer any harm from a stay of the Order pending the Commission's decision for the Motion to Amend. William Blair has already paid an eight-figure

civil monetary penalty and has also implemented compliance enhancements after the completion of the independent consultant's first comprehensive assessment. Given these enhancements, 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. On the other hand, William Blair and its stakeholders would, by virtue of expending unnecessary costs, suffer significant financial harm if the stay is *not* granted and the Commission grants the Motion to Amend.

Fourth, the Commission's grant of a stay can only positively impact the public interest and restore fairness in this case. As noted, the only potential harm that could result is harm to William Blair's stakeholders if the stay is *not* granted and William Blair is forced to comply with onerous and costly obligations likely to be rendered moot.

IV. Conclusion

For the foregoing reasons, William Blair respectfully requests that the Commission stay, under Rule of Practice 401(c), 17 C.F.R. § 201.401(c), the implementation of the Order pending the Commission's decision on the Motion to Amend.

Dated: February 5, 2025

Respectfully submitted,

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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 Stay Implementation of Order Instituting Proceedings** was served via electronic mail on the following:

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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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