U.S. SECURITIES AND EXCHANGE COMMISSION

In the Matter of KROLL BOND RATING AGENCY, LLC, Respondent.	**File No. 3-21776** **MOTION TO MODIFY ORDERED UNDERTAKINGS IN ADMINISTRATIVE PROCEEDING, STAY EFFECTIVENESS OF UNDERTAKINGS, AND FOR ADMINISTRATIVE STAY**

Kroll Bond Rating Agency, LLC ("KBRA") respectfully moves pursuant to Rules 200(d)(1), 154, and 100(c) of the Commission's Rules of Practice for an order to modify the undertakings imposed pursuant to Paragraph 5, Paragraphs 28 through 30, Paragraph 32, Paragraph 33, and Section IV(E) of the Commission's order entered in Administrative Proceeding File No. 3-21776, dated September 29, 2023 (the "Order").

In addition, pursuant to Rule 401 of the Commission's Rules of Practice, KBRA respectfully moves (i) for the Commission to stay the effectiveness of Paragraphs 28 through 30 and Section IV(E) of the Order pending the Commission's disposition of this motion to modify the undertakings imposed pursuant to Paragraph 5, Paragraphs 28 through 30, Paragraph 32, Paragraph 33, and Section IV(E) of the Order and (ii) for the Commission to enter an administrative stay pending its disposition of KBRA's motion to stay.

In support of its motion, pursuant to Rule 154(a) of the Commission's Rules of Practice, KBRA concurrently files a brief in support and authorities and related exhibits.

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Respectfully submitted,

/s/ David S. Petron
David S. Petron
Christopher R. Mills
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005
(202) 736-8000
dpetron@sidley.com
cmills@sidley.com

Counsel for Respondent Kroll Bond Rating Agency, LLC

U.S. SECURITIES AND EXCHANGE COMMISSION

In the Matter of KROLL BOND RATING AGENCY, LLC, Respondent.	**File No. 3-21776**

RESPONDENT'S BRIEF IN SUPPORT OF MOTION TO MODIFY ORDERED UNDERTAKINGS IN ADMINISTRATIVE PROCEEDING, MOTION FOR STAY OF EFFECTIVENESS OF UNDERTAKINGS, AND MOTION FOR ADMINISTRATIVE STAY

David S. Petron
Christopher R. Mills
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005
(202) 736-8000
dpetron@sidley.com
cmills@sidley.com

Counsel for Respondent Kroll Bond Rating Agency, LLC

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Kroll Bond Rating Agency, LLC ("KBRA") is seeking the Commission's relief to equalize the undertakings imposed on it by its settlement with the Commission, entered into as part of the Commission's off-channel communications initiative, with the more tailored undertakings enumerated in the Commission's most recent related settlements with similarly situated firms for indistinguishable violations as part of the same initiative.[1]

Background

On September 29, 2023, the Commission entered an order instituting proceedings, making findings, and imposing sanctions and a cease-and-desist order in Administrative Proceeding File No. 3-21776 (the "Order") in connection with an offer of settlement submitted to the Commission by KBRA. In its offer, KBRA admitted to certain facts, acknowledged that its conduct violated relevant provisions of the federal securities laws, and consented to the entry of the Order. The Order, among other things, ordered KBRA to cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rule 17g-2(b)(7) thereunder, censured KBRA, ordered KBRA to comply with twenty-three paragraphs or subparagraphs of enumerated undertakings (the "Ordered Undertakings"), and imposed a civil money penalty of $4 million.[2] KBRA promptly began paying its civil money penalty pursuant to the payment plan detailed in Section IV(C) of the Order and complying with the other sanctions imposed by the Order.

On the same day the Commission issued the Order, it issued a substantially similar order instituting settled administrative actions for materially similar violations of the same recordkeeping provisions of the federal securities laws against another nationally-recognized

[1] KBRA is not seeking to modify the civil money penalty imposed on it.

[2] KBRA's compliance with the enumerated undertakings is mandated by Section IV(E) of the Order.

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statistical rating organization ("NRSRO") and multiple other firms that are registered with the Commission as broker-dealers or dually registered with the Commission as broker-dealers and investment advisers.[3] As with the Order, each of those orders was issued in connection with the Commission's industry-wide initiative related to "off-channel" communications, and each ordered compliance with undertakings that were substantially uniform to the Ordered Undertakings imposed on KBRA pursuant to the Order.

The consistent treatment of all these firms was intentional. Between 2022 and the end of 2024, the Commission instituted settled enforcement actions against over 100 broker-dealers, investment advisers, dually registered broker-dealer/investment advisers, and NRSROs as part of its off-channel communications initiative.[4] In almost uniform language, the settled orders issued in connection with the initiative described similar violations by each firm. Reflecting the similarity of the underlying conduct and violations, the orders issued during that period also imposed a substantially uniform set of undertakings on each firm that was registered with the Commission as a broker-dealer, investment adviser, NRSRO, or dually registered as a broker-dealer and investment adviser.[5]

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[3] *See* Sec. & Exch. Comm'n, *SEC Charges Two Credit Rating Agencies, DBRS and KBRA, with Longstanding Recordkeeping Failures*, Press Release No. 2023-211 (Sept. 29, 2023); *see also* Sec. & Exch. Comm'n, *SEC Charges 10 Firms with Widespread Recordkeeping Failures*, Press Release No. 2023-212 (Sept. 29, 2023).

[4] *See* SEC Press Release, *SEC Announces Departure of Enforcement Director Gurbir S. Grewal* (Oct. 2, 2024) (touting the Enforcement Division's "proactive initiative [launched] in December 2021 to ensure that regulated entities . . . complied with their recordkeeping requirements," which had "resulted in charges against more than 100 firms and more than $2 billion in penalties for failures to maintain and preserve electronic communications"), *available at* https://www.sec.gov/newsroom/press-releases/2024-162; Sanjay Wadhwa, *Remarks at SEC Speaks 2024* (Apr. 3, 2024) (referring to the Commission's "recordkeeping initiative"), *available at* https://www.sec.gov/newsroom/speeches-statements/sanjay-wadhwa-sec-speaks-2024-04032024.

[5] For example, the 11 orders issued on September 27, 2022 by the Commission in connection with this industry-wide initiative against 16 broker-dealers or dual registrants each imposed undertakings that were substantially uniform to the undertakings imposed in the two orders entered on May 11, 2023 concerning two firms, the nine orders entered on August 8, 2023 concerning 11 firms, the six relevant orders entered on September 29, 2023 concerning 10 firms, the eight orders entered on February 9, 2024 concerning 16 firms, the 17 relevant orders entered on August 14, 2024 concerning 25 firms, and seven of the eight relevant orders entered on September 24, 2024 concerning ten firms. The orders involving other NRSROs have also imposed substantially uniform undertakings (with one exception for an NRSRO that was not similarly situated to other settling parties). *See* Sec. &

After what had been its uniform approach to off-channel communication enforcement for over two years against dozens of firms, the Commission altered course with orders instituting settled administrative proceedings against three broker-dealers and a dually registered broker-dealer/investment adviser on January 13, 2025 (the "January 2025 Orders").[6] Unlike the Commission's previously consistent practice in this initiative, the January 2025 Orders took a materially different approach to materially similar violations of the same provisions of the federal securities laws by similarly situated firms by eliminating certain costly and burdensome undertakings and compliance requirements.[7] The scope of the undertakings enumerated in the January 2025 Orders is significantly more tailored and less demanding than the undertakings in prior orders. Unlike the prior orders, the January 2025 Orders did not mandate that the settling firms retain an independent compliance consultant, did not require the independent compliance consultant to engage in a multi-year review of recordkeeping practices and policies, did not require the preparation of multiple reports to be submitted to the Commission staff, and did not require the firms to prospectively report relevant disciplinary actions promptly to the Commission staff.

Exch. Comm'n, *SEC Charges Six Credit Rating Agencies with Significant Recordkeeping Failures*, Press Release No. 2024-114 (Sept. 3, 2024).

The exception concerned Qatalyst Partners, which self-reported the violations to the Commission and engaged in extraordinary remediation for almost a decade prior to the Commission's action. *See In the Matter of Qatalyst Partners LP*, Rel. No. 34-101143 (Sept. 24, 2024). Highlighting Qatalyst Partners' unique situation, Commissioners Uyeda and Pierce publicly dissented from the Commission's decision to bring an action against Qatalyst Partners. *See* Statement by Commissioners Peirce and Uyeda, *A Catalyst: Statement on Qatalyst Partners LP* (Sept. 24, 2024), *available at* https://www.sec.gov/newsroom/speeches-statements/statement-peirce-uyeda-qatalyst-09242024.

[6] *See In the Matter of PJT Partners LP*, Rel. No. 34-102167 (Jan. 13, 2025); *In the Matter of Robinhood Financial LLC and Robinhood Securities, LLC*, Rel. No. 34-102170 (Jan. 13, 2025); *In the Matter of Santander US Capital Markets LLC*, Rel. No. 34-102171 (Jan. 13, 2025); and *In the Matter of Charles Schwab & Co., Inc.*, Rel. No. 34-102172 (Jan. 13, 2025).

[7] It appears that the January 2025 Orders also departed from what had been the Commission's programmatic approach to civil money penalties in the off-channel initiative, but for a variety of reasons, that change is not a subject of this Motion.

As a result, KBRA is subject to ongoing sanctions and attendant obligations—including some that go well beyond what is otherwise required by the federal securities laws—that are significantly more severe and costly than those that the Commission most recently determined were appropriate in this context, as demonstrated by the January 2025 Orders.

To date, KBRA has devoted significant time and resources to comply with its Ordered Undertakings. KBRA expects to continue to incur substantial additional costs and burdens well into the future as a result of the Order. In contrast, the firms that are respondents in the January 2025 Orders will never have to incur these costs and burdens.

Compelling Reasons Exist to Equalize the Order's Undertakings with the Undertakings in the January 2025 Orders

The Commission is authorized to amend its orders when they are no longer equitable,[8] just as federal courts have the authority to amend final judgments or orders to "relieve a party . . . from a final judgment, order, or proceeding" if "applying [the judgment or order] prospectively is no longer equitable."[9] That standard is met here. KBRA must comply with the Ordered Undertakings, and that obligation will, for years, place substantially more costs and burdens on KBRA compared to those resulting from the undertakings enumerated in the January 2025

[8] *See*, *e.g.*, *In the Matter of Millenium Partners et al.*, Rel. No. 34-78364 (July 19, 2016) (Commission order granting motion to modify undertakings imposed in settled administrative proceeding); *see also In the Matter of F.X.C. Investors Corp. and Francis X. Curzio*, Rel. No. ID-218 (Dec. 9, 2002) ("If Respondents believed that the 1981 censure [imposed in a settled administrative proceeding] was no longer equitable after [an intervening decision], the burden was on them to file a motion to vacate the 1981 sanction."); *see also* 17 C.F.R. § 201.200(d)(1) (authorizing the Commission to amend an order instituting proceeding "at any time" "[u]pon motion by a party"); 17 C.F.R. § 201.154 (authorizing the filing of motions); 17 C.F.R. § 201.100(c) (explaining that, notwithstanding any particular provision of the Rules of Practice, the Commission may take action that "would serve the interests of justice and not result in prejudice to the parties to the proceeding").

[9] Fed. R. Civ. Pro. 60(b)(5); *see also In the Matter of Robert M. Ryerson*, Rel. No. 34-57839 at 7–8 (May 20, 2008) (although "the Federal Rules of Civil Procedure do not apply to administrative proceedings," they can "provide helpful guidance" to the Commission's interpretation of its Rules of Practice); *In the Matter of Jay Alan Ochanpaugh*, Rel. No. 34-54363 at 10 n.24 (Aug. 25, 2006) (explaining that the Commission's decisions may be "guided by the principles of the Federal Rules [of Civil Procedure]").

Orders. As Commission precedent recognizes, there is no just reason for such disparate treatment of similarly situated settling firms.

In these particular circumstances, it would be inequitable to require KBRA to comply with the prior Ordered Undertakings instead of the undertakings enumerated in the January 2025 Orders. The violations are materially the same across the orders—which is not surprising given the Commission's historical insistence on uniform undertakings in connection with its off-channel initiative. Until the January 2025 Orders, a non-negotiable condition of settlement imposed on settling NRSROs, broker-dealers, and dually registered broker-dealers and investment advisers was compliance with materially identical undertakings, regardless of the firm's comparative size or remedial actions.

The January 2025 Orders also show that the Ordered Undertakings are needlessly burdensome. As a type of remedial sanction, undertakings should be tailored to remedy the relevant violations in light of the facts and circumstances.[10] And they should be no more burdensome than necessary to remedy the relevant misconduct.[11] The January 2025 Orders reflect the Commission's most recent judgment—informed by issuing scores of enforcement actions since the start of its off-channel initiative and seeing the burdens firms must bear to comply with the relevant undertakings—that the burdensome undertakings like those imposed by the Ordered Undertakings are not necessary to remedy violations of the relevant recordkeeping rules. Instead, as the January 2025 Orders indicate, the Commission has concluded that the

[10] *See* Section 15(b)(4) of the Exchange Act (stating that remedial sanctions must be in the public interest); *In the Matter of Shawn K. Dicken*, Rel. No. 34-89526 at 1 (Aug. 12, 2020) (Commission order) ("When determining whether remedial action . . . is in the public interest under Exchange Act Section 15(b), the Commission must consider the question with reference to the underlying facts and circumstances of the case.").

[11] *See McCarthy v. SEC*, 406 F.3d 179, 189–90 (2d Cir. 2005) (vacating purportedly remedial sanction because the "facts in the record that suggest the sanction may be excessive and punitive"); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 184 (2d Cir. 1976) (Friendly, J.) (vacating purportedly remedial sanction that was "too severe" and "unnecessary" in the circumstances).

issues addressed in these settled actions, which are common, can be appropriately addressed without such burdensome undertakings. That is enough to establish that the Ordered Undertakings are needlessly burdensome. Three other factors related to KBRA's status as an NRSRO remove any doubt that could remain.

First, the burdens imposed by the Ordered Undertakings are disproportionately severe for KBRA because the Commission's recordkeeping rules for NRSROs are much narrower than the Commission's recordkeeping rules for broker-dealers.[12] Yet, despite those meaningful differences, KBRA is required to comply with the same undertakings that were designed with broker-dealers in mind—even though some broker-dealers, with more comprehensive recordkeeping obligations, have been excused from those undertakings.

Second, the existing regulatory framework for NRSROs makes the Ordered Undertakings even less necessary. Unlike broker-dealers, who are not examined by the Commission as a matter of course, NRSROs are subject to annual, statutorily mandated examinations by the Commission staff.[13] These examinations broadly inquire into an NRSROs compliance with applicable regulatory requirements, including the requirement to maintain communications pursuant to Rule 17g–2(b)(7).[14] With these annual examinations, there is even less of a justification for requiring yet more reviews by an independent compliance consultant.

Third, the effect of the Ordered Undertakings undermines Congress's judgments regarding the proper regulation of NRSROs. When enacting the statutory foundation for the

[12] *See* Final Rule, *Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations*, 72 Fed. Reg. 33,564, 33,610 n. 559 (June 18, 2007) (explaining that Rule 17g–2 "requires substantially less records to be made and maintained than Rules 17a–3 and 17a–4.").

[13] *See* Section 15E(p)(3) of the Exchange Act.

[14] *See*, *e.g.*, *Staff Report on Nationally Recognized Statistical Rating Organizations* at 17-18 (Feb. 2024) (discussing exam finding concerning compliance with Rule 17–g2(b)(7)).

Commission's regulations of NRSROs, Congress found that "additional competition [between NRSROs] is in the public interest."[15] In light of that express Congressional finding, the Commission historically has been mindful that poorly suited regulatory requirements can harm competition. Of particular relevance here, the Commission has already recognized that one-size-fits-all compliance costs can undermine competition between NRSROs because "compliance costs . . . may not scale proportionately with size."[16] That means those types of compliance requirements can "have a disproportionate impact on smaller NRSROs," which "create[es] adverse effects on competition."[17] In those circumstances, uniform or fixed costs "may have a disproportionate impact on smaller NRSROs that may find it more difficult to bear the costs."[18] Those concerns apply with full force here. According to the Commission staff, the three largest NRSROs (which do not include KBRA) have generated more than 91 percent of all credit rating revenues.[19] Those firms can easily absorb the costs associated with any undertakings and pass those costs along more easily. As the Commission has recognized, smaller NRSROs (including KBRA) have a "greater difficulty to pass the increase in costs to their clients."[20]

Commission precedent supports granting KBRA's motion to amend the undertakings mandated by the Order to bring them in line with the undertakings enumerated in the January 2025 Orders. For example, the Commission previously brought numerous enforcement actions as part of an initiative targeting improper market-timing and late trading by market

[15] Pub. Law 109-291, 120 Stat 1327.

[16] Final Rule, *Nationally Recognized Statistical Rating Organizations*, 79 Fed. Reg. 55,078, 55,181 (Sept. 14, 2014).

[17] *Id.* at 55,162, 55,181.

[18] *Id.* at 55,093.

[19] *See Staff Report on Nationally Recognized Statistical Rating Organizations* at 28, Chart 12 (Jan. 2025).

[20] Final Rule, *Nationally Recognized Statistical Rating Organizations*, 79 Fed. Reg. 55,078, 55,095 (Sept. 14, 2014).

participants.[21] As part of that initiative, many firms settled with the Commission through administrative enforcement actions in which the settling firms agreed to comply with certain undertakings (among other things). The undertakings addressed in those settled orders evolved over time, and as a result, firms that settled enforcement actions for materially similar misconduct became subject to dissimilar undertakings. That led to a number of firms seeking to modify the undertakings that had been imposed upon them to bring them in line with more recent actions that were connected with the same enforcement initiative.

The Commission granted those requests, relieving some of the regulatory burdens that had not been applied to similarly situated firms. For example, in *Millenium Partners*, the Commission granted respondent's motion "to relieve [it] of its ongoing obligations" to comply with certain undertakings, thereby conforming its undertakings with "similar undertakings in other administrative proceedings related to [the same conduct] and other actions."[22] The Commission has similarly modified sanctions imposed against several other firms.[23] The Commission's modifications of the undertakings imposed in those orders supports KBRA's motion here.

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[21] *See* Sec. & Exch. Comm'n, *Performance and Accountability Report (2004)* at 23–24 (describing numerous enforcement actions that were the result of "risk-targeted sweeps" relating to inappropriate market timing and late trading); Sec. & Exch. Comm'n, *Performance and Accountability Report (2005)* at 7 (highlighting additional settled actions involving improper market-timing and late trading); Sec. & Exch. Comm'n, *Performance and Accountability Report (2006)* at 9–10 (explaining how the Commission "continued to address abuses relating to the market timing of mutual funds" and "brought several notable cases against traders and brokers who carried out market timing schemes to the detriment of mutual fund shareholders").

[22] *In the Matter of Millenium Partners et al.*, Rel. No. 34-78364 at 2 (July 19, 2016) (quotation marks and citation omitted).

[23] *See*, *e.g.*, *In the Matter of Putnam Investment Management, LLC*, Rel. No. IAA-3600 (May 3, 2013); *In the Matter of Massachusetts Financial Services Co., et al.*, Rel. No. IAA-29858 (Nov. 9, 2011); *In the Matter of Janus Capital Management, LLC*, Rel. No. IAA-3065 (Aug. 5, 2010); and *In the Matter of MDC Holdings, Inc.*, Rel. No. 34-39537 (Jan. 9, 1998).

Modification of KBRA's Order is necessary to treat similarly situated firms equitably, and failing to do so would be arbitrary and capricious. As the D.C. Circuit has explained on more than one occasion, sanctions imposed by the Commission that are "out of line with the agency's decisions in other cases"[24] involving "comparable situations" invite judicial challenges that the Commission's disparate treatment is arbitrary and capricious.[25] There is no reasonable basis for different sanctions to be imposed on similar firms for similar misconduct as part of the same enforcement initiative,[26] particularly where the January 2025 Orders reflect the Commission's judgment that the Ordered Undertakings are not necessary to remedy the violations, protect investors, or otherwise promote the public interest.

Accordingly, there are compelling reasons—supported by Commission precedent—to modify the Order.[27]

The Commission Should Stay the Effectiveness of the Ordered Undertakings Pending Resolution of the Motion to Modify the Ordered Undertakings

The Commission's Rules of Practice give the Commission broad authority to issue stays.[28] Four factors guide the Commission's determination of whether to grant a stay: whether "(i) there is a strong likelihood that the moving party will eventually succeed on the merits of the [request]; (ii) the moving party will suffer irreparable harm without a stay; (iii) another party will

[24] *Collins v. SEC*, 736 F.3d 521, 525-26 (D.C. Cir. 2013).

[25] *Lorenzo v. SEC*, 872 F.3d 578, 596 (D.C. Cir. 2017), *aff'd* 587 U.S. 71 (2019).

[26] *See supra* n.4 (describing recordkeeping enforcement initiative).

[27] Included as Exhibit A to this brief is a proposed amended order. Included as Exhibit B is a redline comparing the proposed order against the Order.

[28] *See* 17 C.F.R. § 201.401(a) (providing that the Commission may grant a stay based on a motion filed with the Commission "or on [the Commission's] own motion"); *see also* 17 C.F.R. § 201.100(c) ("The 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.").

suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest."[29] Whether a stay is warranted depends "on a weighing of the strengths of these four factors."[30] Because it is a multi-factor balancing test, "not all four factors must favor a stay for a stay to be granted."[31] Further, not all factors are weighted equally. Rather, "[t]he first two factors are the most critical,"[32] 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."[33] Each factor supports the issuance of a stay here.

First, there is a strong likelihood that the Commission will grant the requested relief. As explained above, KBRA merely seeks to have the Order amended to conform it with the most recent analogous settled orders involving similarly situated firms that were issued by the Commission in connection with the same off-channel initiative. The Commission has granted similar relief on multiple occasions over the last several decades.[34]

Second, KBRA will suffer irreparable harm absent entry of stay. The types of irreparable harm that support the issuance of a stay include those financial harms "where no 'adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation.'"[35] For example, the Commission recently held that a firm's loss of a contemplated

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[29] *In the Matter of Scottsdale Capital*, Rel. No. 34-83783 at 2 (Aug. 6, 2018) (quotation marks and citation omitted) (Commission order granting motion for stay pursuant to Rule 401).

[30] *Id.* at 3 (quotation marks and citation omitted).

[31] *Id.* (quotation marks and citation omitted).

[32] *Id.* (quotation marks and citation omitted).

[33] *Id.* (quotation marks and citation omitted).

[34] *See supra* nn.22 & 23 (providing examples).

[35] *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)); *see also In the Matter of Max Zavanelli*, Rel. No. IAA-4471 at 3 n.12 (Aug. 4, 2016) (quoting *Wis. Gas Co. v. FERC* in discussion of irreparable injury that warrants issuance of a stay); *see also Restaurant Law Center v. Dep't of Labor*, 66 F. 4th 593, 597 (5th Cir. 2023) ("purely economic costs may

transaction and "other business opportunities," which could not necessarily be remedied after the fact, were the type of irreparable harms that warranted the issuance of a stay.[36] KBRA continues to devote substantial time and resources to comply with the ongoing obligations imposed by the Ordered Undertakings, including prospective compliance with the Ordered Undertakings. Those costs cannot be recouped after the fact, in litigation or otherwise. Further, imminent deadlines associated with the Ordered Undertakings continue to approach in the coming weeks, which will impose additional costs and burdens absent a stay.

Third, no other party will suffer harm as a result of the stay. The Ordered Undertakings concern only KBRA's internal operations and do not substantively regulate its conduct with any other market participants. The Commission would not be harmed by entering a stay, especially because KBRA has already taken many steps to enhance its recordkeeping compliance. Moreover, the fact that the January 2025 Orders do not require the same undertakings is strong evidence that the Ordered Undertakings are not necessary to prevent any harm.

Fourth, the public interest strongly supports the issuance of the stay. The Commission has a strong interest in not imposing materially different sanctions on similarly situated firms for essentially the same misconduct in connection with settlements entered into as part of the same Commission initiative.[37] Indeed, the public interest is disserved when disparate sanctions are imposed on similarly situated respondents.[38] Further, the January 2025 Orders demonstrate that

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count as irreparable harm where they cannot be recovered in the ordinary course of litigation") (quotation marks and citation omitted).

[36] *In the Matter of Minim, Inc.*, Rel. No. 34-102482 at 6 (Feb. 25, 2025).

[37] *Allina Health Servs. v. Sebelius*, 756 F. Supp. 2d 61, 71 (D.D.C. 2010) ("The public interest is served by the consistent and uniform application of regulations to similarly-situated parties . . . ."); *see also Indiana v. Edwards*, 554 U.S. 164, 177 (2008) ("proceedings must not only be fair, they must appear fair to all who observe them") (quotation marks and citation omitted).

[38] *See id.*

the Ordered Undertakings are not necessary to protect the public interest. And the Ordered Undertakings have the effect of hindering competition among NRSROs, which disserves the public interest.

Accordingly, each factor strongly supports KBRA's motion to stay the effectiveness of the Ordered Undertakings.[39]

The Commission Should Administratively Stay the Effectiveness of the Ordered Undertakings Pending Resolution of the Motion to Stay

The Commission has the authority pursuant to Rule 401(d) of the Commission's Rules of Practice to issue administrative stays pending its resolution of motions to stay and other motions.[40] That rule is an appropriate basis for the issuance of an administrative stay here.[41] When, as here, the movant will continue to suffer irreparable harm until relief is granted, the issuance of an administrative stay is appropriate to "give the Commission an opportunity to consider [the underlying] motion for a stay . . . ."[42]

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[39] Just as the Commission has the power to enter a stay in this administrative proceeding, it also has the power upon its own determination to enter an omnibus stay of undertakings in multiple prior administrative enforcement orders entered as part of the off-channel communications initiative. *See* 17 C.F.R. § 201.100(c). The Commission has similarly provided omnibus relief related to the off-channel communications initiative. *See*, e.g. *Order Under Rules 262(b)(2), 506(d)(2)(ii), and 602(e) of the Securities Act of 1933 and Rule 503(b)(2) of Regulation Crowdfunding 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) (waiving certain disqualifications in connection with multiple settled enforcement actions as part of the initiative).

[40] *See In the Matter of Minim, Inc.*, Rel. No. 34-101502 at 1 (Nov. 1, 2024) (Commission order issuing administrative stay); *In the Matter of Minim, Inc.*, Rel. No. 34-102482 at 1 (Feb. 25, 2025) (Commission order granting motion for stay).

[41] Rule 401(d) expressly authorizes the Commission to issue administrative stays in certain cases and Rule 100(c) permits the Commission to issue an administrative stay pursuant to Rule 401(d) here. *See* Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission, Rel. No. 34-49412, 69 Fed. Reg. 13,116, 13,169 (Mar. 19, 2004) (explaining that the Commission was adopting Rule 100(c) to "make explicit the Commission's authority to order a variation from the rules"); *accord In re: Pending Admin. Proceedings*, Rel. No. 34-88415 (Mar. 18, 2020) (substantively departing from the limits of Rule 161(b)(1), pursuant to Rule 100(c)).

[42] *Id.*; *see also Cobell v. Norton*, No. 03-5262, 2004 WL 603456, at *1 (D.C. Cir. 2004); *Twelve John Does v. District of Columbia*, 841 F. 2d 1133, 1137 (D.C. Cir. 1988) (explaining that the court "entered a temporary administrative stay to permit time for full consideration of the motions"). Again, the Commission has the power upon its own determination to enter an omnibus administrative stay in a single order addressing multiple pending motions. *See supra* n.39.

Conclusion

For the foregoing reasons, the Commission should grant KBRA's motion to modify the Ordered Undertakings, KBRA's motion to stay the effectiveness of the Ordered Undertakings pending the Commission's resolution of its motion to modify, and KBRA's motion for an administrative stay pending the Commission's resolution of the underlying motions.

March 13, 2025

Respectfully submitted,

/s/ David S. Petron
David S. Petron
Christopher R. Mills
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005
(202) 736-8000
dpetron@sidley.com
cmills@sidley.com

Counsel for Respondent Kroll Bond Rating Agency, LLC

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CERTIFICATE OF SERVICE

Pursuant to Commission Rule of Practice 150 and 151, I certify that on March 13, 2025, I filed this document using the eFAP system. I further certify that I caused a true and correct copy of the foregoing to be served by electronic mail on the following:

Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
APfilings@sec.gov

Ben Kuruvilla
Jack Kaufman
Division of Enforcement
Securities and Exchange Commission
100 Pearl Street, Suite 20-100
New York, NY 10004
kuruvillabe@sec.gov
kaufmanja@sec.gov

/s/ David S. Petron
David S. Petron

CERTIFICATE OF COMPLIANCE

Pursuant to the Commission's Rule of Practice 151(e), I hereby certify that I have omitted or redacted any sensitive personal information, as defined by Rule of Practice 151(e)(3), from this filing.

/s/ David S. Petron
David S. Petron
Sidley Austin LLP
1501 K Street NW
Washington, DC 20005
Tel.: (202) 736-8000
dpetron@sidley.com

UNITED STATES OF AMERICA

Before the

U.S. SECURITIES AND EXCHANGE COMMISSION

In the Matter of KROLL BOND RATING AGENCY, LLC, Respondent.	**File No. 3-21776**

INDEX OF EXHIBITS

Exhibits	**Description**
A	Proposed Amended Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15E(d) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order
B	Redline of the Proposed Amended Order and the Order Filed by the Commission in Administrative Proceeding File No. 3-21776, dated September 29, 2023

OS Received 03/13/2025