UNITED STATES OF AMERICA
Before the
U.S. SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21850

In the Matter of **Northwestern Mutual Investment Services, LLC, Northwestern Mutual Investment Management Company, LLC, and Mason Street Advisors, LLC,** **Respondents.**	**DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENTS' MOTION TO MODIFY ORDERED UNDERTAKINGS IN ADMINISTRATIVE PROCEEDING**

The Division of Enforcement ("Division") respectfully submits this opposition to the motion ("Motion") filed by Respondents Northwestern Mutual Investment Services, LLC ("NMIS"), Northwestern Mutual Investment Management Company, LLC ("NMIMC"), and Mason Street Advisors, LLC ("MSA") (collectively, "Respondents") to Modify Ordered Undertakings in Administrative Proceeding. The Commission should deny Respondents' Motion as impermissibly seeking to revisit and vacate relief to which Respondents expressly agreed in their prior settlement of this matter with the Commission.

PRELIMINARY STATEMENT

On February 9, 2024, the Commission instituted a settled Order Instituting Proceedings ("Settled OIP") against Respondents, in which NMIS admitted that it willfully violated Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-4(b)(4) thereunder, and NMIMC and MSA violated Section 204 of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 204-2(a)(7) thereunder, by failing to maintain or preserve employees'

OS Received 03/13/2025

communications on personal devices ("off-channel communications") that were required to be preserved under those Rules. NMIS also admitted that it failed reasonably to supervise its personnel pursuant to Section 15(b)(4)(E) of the Exchange Act, and NMIMC and MSA admitted that they failed reasonably to supervise their personnel pursuant to Section 203(e)(6) of the Advisers Act. The Settled OIP orders Respondents to comply with a series of undertakings designed to remediate those violations. The undertakings ordered in the Settled OIP were the outcome of voluntary negotiations between the Division and Respondents in which Respondents were represented by sophisticated counsel. The Commission ordered these undertakings upon its acceptance of Respondents' formal written settlement offer, which resolved the Division's investigation of those violations. Respondents now seek the Commission's permission to back out of that agreement. The Commission should deny Respondents' Motion in full because Respondents fail to offer an adequate basis in law or fact to support their Motion to reopen the Settled OIP.

Respondents' sole argument—that purportedly similarly situated respondents in separate proceedings later received a better outcome for themselves—is insufficient to justify permitting Respondents to vacate their agreement in order to get what they view as a better deal. Modifications of settlements are widely disfavored, and federal courts and the Commission grant such modifications only in rare circumstances that are not present here. Indeed, granting Respondents' requested relief would open the floodgates—inviting other respondents to relitigate all manner of settled Commission administrative proceedings—and, thus, would undermine the finality of the Commission's orders and the efficacy of the Commission's enforcement program.

OS Received 03/13/2025

ARGUMENT

The Commission Should Deny Respondents' Motion to Modify the Ordered Undertakings

It is well-established by federal courts—under Fed. R. Civ. P. 60(b), which the Commission has followed in analogous motions—that defendants seeking to vacate a final judgment face a high bar. Indeed, such modifications are reserved only for "exceptional circumstances" and are "generally not favored." *See SEC v. Allaire*, No. 03-cv-4087, 2019 WL 6114484, at *2 (S.D.N.Y. Nov. 18, 2019). Moreover, where a defendant "wishes to disturb a consent judgment," this standard is "even harder to reach." *SEC v. Alexander*, No. 06-cv-3844, 2013 WL 5774152, at *2 (E.D.N.Y. Oct. 24, 2013); *see also Sampson v. Radio Corp. of America*, 434 F.2d 315, 317 (2d Cir. 1970) ("[A] motion [for relief from a judgment] under [Federal Rule of Civil Procedure] 60(b) cannot be used to avoid the consequences of a party's decision to settle the litigation . . ."); *United States v. Radiology Grp.*, No. 19-cv-3542, 2024 WL 5247887, at *3 (S.D.N.Y. Dec. 30, 2024) (respondent "cannot be relieved" of obligations "merely because [its] assessment of the consequences was incorrect").

Citing such precedent, the Commission has held that there must be "compelling circumstances" to justify vacating a settlement. *See In the Matter of Gregory Bolan*, Exch. Act Rel. No. 85971, 2019 WL 2324336, at *3 (May 30, 2019) (settlements "should be upheld whenever equitable and policy considerations so permit"); *cf. In the Matter of Gregory Osborn*, Sec. Act Rel. No. 10641, 2019 WL 2324337, at *3 (May 19, 2019) **(**Commission rejected collateral attack on settlement, noting that respondent's "choice [to settle] was a risk, but calculated and deliberate and such as follows a free choice").

Thus, where a defendant makes a "free, bilateral decision to settle," a "failure to properly estimate the loss or gain from entering a settlement agreement is not an extraordinary

OS Received 03/13/2025

circumstance that justifies relief" from the terms of the settlement. *United States v. Bank of New York*, 14 F.3d 756, 760 (2d Cir. 1994). "To hold otherwise would undermine the finality of judgments in the litigation process." *Id.* at 759; *see also SEC v. Longfin Corp.*, 18-cv-2977, 2020 WL 4194484, at *2 (S.D.N.Y. July 21, 2020) (Rule 60(b)(6) "is not intended to relieve a party from an agreement that he voluntarily entered but now regrets.").

Respondents' sole basis for vacating the ordered undertakings in their Settled OIP—that is, that different respondents in later, similar cases received a better deal—does not constitute the "exceptional circumstances" or "compelling circumstances" required for such relief. To the contrary, granting such relief now would create perverse incentives in settlement and set a new precedent that would severely undermine the Commission's enforcement program. *Cf. In the Matter of Richard Feldmann*, Sec. Act Rel. No. 10078, 2016 WL 2643450, at *2 (May 10, 2016) (that respondent would have received less severe sanction had he continued to litigate was not a "compelling circumstance[]").

The Commission precedent that Respondents cite is inapposite. Those decisions involved respondents who—unlike Respondents here—had complied for years (sometimes nearly a decade) with their ordered undertakings. Moreover, the respondents in those cases sought relief from their prior settlement obligations when the undertakings had purportedly become impractical or outdated, and the Division had either supported the requested relief or did not oppose it. *See, e.g.*, *In the Matter of Millenium Partners et al.*, Exch. Act Rel. No. 78364, 2016 WL 3902753, at *1 (July 19, 2016) (relief granted more than ten years after original order; and respondent represented that it had "completely discharged all of the obligations under the Order that can be discharged" and Division did not oppose relief); *see also*, *In re MDC Holdings*, Exch. Act Rel. No. 39537, 1998 WL 23204 (Jan. 9, 1998) (respondent represented that it had complied

with the order for nearly 10 years and Division supported request for relief); *In re Putnam Inv. Mgmt.*, Adv. Act Rel. No. 3600 (May 3, 2013) (relief granted over nine years after initial OIP); *In re Mass. Fin. Servs.*, Adv. Act Rel. No. 3312 (Nov. 9, 2011) (relief granted over seven years after initial OIP); *In re Janus Cap. Mgmt.*, Adv. Act Rel. No. 3065 (Aug. 5, 2010) (relief granted over six years after initial OIP).

Respondents note that, in the Commission "market timing" cases (*e.g.*, *Millennium*), later-in-time respondents settled on less stringent terms. However, unlike Respondents here, the earlier-in-time respondents in those cases did not seek to back out of their agreements. To the contrary, those respondents first performed under their original agreements for years, undergoing several biannual independent compliance reviews. At least some sought "sunset" provisions for undertakings that had an indefinite time frame. Here, by contrast, Respondents' undertakings are not indefinite, and the OIP sets out a clear schedule for their completion. Respondents seek much broader, consequential relief: to be absolved of the ordered undertakings under the Settled OIP—and they do so about a year after agreeing to perform them. The Commission should not incentivize other respondents to seek such relief.

CONCLUSION

For the foregoing reasons, the Commission should deny Respondents' motion in its entirety.

Dated: March 13, 2025

Respectfully Submitted,

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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:

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CERTIFICATE OF COMPLIANCE

Pursuant to Commission 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.

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