

U.S. SECURITIES AND EXCHANGE COMMISSION

In the Matter of

File No. 3-21850

NORTHWESTERN MUTUAL
INVESTMENT SERVICES, LLC,
NORTHWESTERN MUTUAL
INVESTMENT MANAGEMENT
COMPANY, LLC, AND MASON STREET
ADVISORS, LLC,

Respondents.

**RESPONDENTS' REPLY BRIEF IN SUPPORT OF MOTION TO MODIFY ORDERED
UNDERTAKINGS IN ADMINISTRATIVE PROCEEDING**

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I. INTRODUCTION

Northwestern Mutual Investment Services, LLC, Northwestern Mutual Investment Management Company, LLC, and Mason Street Advisors LLC (collectively “Northwestern Mutual”) submit this reply brief in further support of Northwestern Mutual’s Motion to Modify Ordered Undertakings in Administrative Proceeding (the “Motion to Modify”). Northwestern Mutual seeks to equalize certain prospective undertakings imposed on it as part of the Commission’s off-channel communications initiative with the undertakings imposed on firms in January 2025 (the “January 2025 Orders”) as part of the same initiative. Despite statements by the Division of Enforcement (the “Division”) in its opposition (the “Opposition”), Northwestern Mutual is not attempting to “back out of [its] agreement” or “vacate” the agreement to get a “better deal.”¹ In fact, Northwestern Mutual has been complying with the sanctions – including promptly paying a \$16.5M civil money penalty and retaining an independent compliance consultant – for more than a year. Northwestern Mutual is simply requesting that the Commission take action to equalize the treatment of similarly situated firms in the same initiative for equivalent violations and materially indistinguishable conduct. Such action is grounded in rule and precedent and will serve to restore fundamental notions of fairness.

In its Opposition, the Division does not dispute the significantly disparate treatment of Northwestern Mutual and other firms with the firms that were part of the January 2025 Orders. The Division does not dispute that Northwestern Mutual is similarly situated to the firms that were part of the January 2025 Orders and that the violations were equivalent and the conduct materially indistinguishable. And the Division does not dispute that the sanctions imposed on the firms that were part of the January 2025 Orders are much less burdensome and yet just as

¹ See Division of Enforcement Opposition to Respondents Motion to Modify, pg. 2

effective in ensuring prospective compliance, protecting investors, and otherwise vindicating the public interest. Instead, the Division misconstrues the circumstances under which Northwestern Mutual's settlement was entered into and incorrectly conflates the relief sought by Northwestern Mutual with the relief sought by respondents in other, distinguishable cases. The justification for and scope of the targeted modifications Northwestern Mutual is requesting regarding certain prospective undertakings satisfy the standard for modification and, if equalized, will not, as the Division contends, "open the floodgates" or "create perverse incentives in settlement."² To the contrary, if left unequalized, the sanctions will not only continue to be arbitrary and capricious but will be counterproductive to the Commission's enforcement program.

II. ARGUMENTS

a. The prospective undertakings are unnecessary and compelling circumstances exist to modify them.

As explained in more detail in the brief in support of the Motion to Modify, the January 2025 Orders demonstrate that the prospective undertakings imposed on Northwestern Mutual are not in the public interest and are needlessly burdensome. In addition, the prospective undertakings will continue to cause Northwestern Mutual to incur substantially greater costs and regulatory obligations than the firms that expended more of the Commission's resources and delayed settlement by almost a year. The former Director of the Division, Gurbir Grewal, recently expressed concerns regarding such treatment:

[S]weeps and initiatives are effective . . . [but] you need to be figuring out what the ramp down is going to be . . . and how do you draw that line in fairness to the first person who comes in to address an issue and then maybe somebody in that same first batch of the sweep drags their feet and just because they drag their feet until two years later you know

² *Id.* at pgs. 2 and 4.

should they benefit . . . how is that fair to the entities that came in and resolved things more quickly . . .”³

In its Opposition, the Division does not contest these facts or contend that there is any meaningful difference between Northwestern Mutual and the firms that were part of the January 2025 Orders. Furthermore, the caselaw and other authority that the Division relies on to try to make the argument that compelling circumstances do not exist to warrant modification of the undertakings is inapposite and unpersuasive. In *In the Matter of Gregory Bolan*, the respondent was attempting to vacate a settlement.⁴ That is not and has never been the issue in this proceeding. Northwestern Mutual is not seeking to vacate the settlement nor is it seeking to amend most of the sanctions, including the civil money penalty, imposed on it. In *In the Matter of Richard Feldmann*, the respondent was requesting similar treatment to that of a litigating party.⁵ Again, this is not and has never been the issue in this proceeding. The significantly disparate treatment that Northwestern Mutual is seeking to rectify is among similarly situated firms, for equivalent violation, based on materially indistinguishable conduct, in the same initiative.

The Division also cites to *SEC v. Longfin Corp.* to suggest that Northwestern Mutual is simply trying to get relief from an order that was “voluntarily entered” into but that it “now regrets.”⁶ The Division’s suggestion is misguided. As explained in this brief and the brief in support of the Motion to Modify, Northwestern Mutual is seeking targeted modifications to equalize its prospective undertakings with the sanctions imposed on firms in the January 2025

³ Docket Media LLC, Keynote Q&A Discussion with Gurbir Grewal (Jan. 30, 2025), *available at* <https://youtu.be/T9rcDp0aRxk?si=euI9tu3MShkomi8W>.

⁴ See Division of Enforcement Opposition to Respondents Motion to Modify, pg. 3 discussing *In the Matter of Gregory Bolan*, Exch. Act Rel. No. 85971, 2019 WL 2324337, at *3 (May 30, 2019).

⁵ *Id.* at pg. 4 discussing *In the Matter of Richard Feldmann*, Sec. Act Rel. No. 10078, 2016 WL 2643450, at *2 (May 10, 2016).

⁶ *Id.* at pg. 4 discussing *SEC v. Longfin Corp.*, 18-cv-2977, 2020 WL 4194484, at *2 (S.D.N.Y. July 21, 2020).

Orders. At the time of settlement, the Division represented to Northwestern Mutual, and numerous other firms, that the terms were universal and non-negotiable and that not settling to them would result in disruptive and expansive investigative demands. That representation, as shown by the January 2025 Orders, was inaccurate.

Moreover, the Division fails to successfully distinguish *Millenium Partners*⁷ and related market timing cases. The relevance of those cases does not rest on the duration of compliance or the Division's lack of opposition to modification. It rests on the prospective application of ordered undertakings that have become "impractical or outdated" in light of subsequent developments.⁸ Like in *Millenium Partners*, Northwestern Mutual has complied with the sanctions imposed on it as a result of the settlement. The January 2025 Orders, however, prove that the prospective undertakings are not necessary to remedy equivalent violations for materially indistinguishable conduct by similarly situated firms, ensure prospective compliance, protect investors, or vindicate the public interest.

The Commission's proceedings are governed by SEC Rules of Practice, and Rule of Practice 200(d)(1) contemplates that "amendment of orders instituting proceedings should be freely granted" and that the Commission be allowed to modify an order instituting proceedings "to take into account subsequent developments which should be considered in disposing of a proceeding"⁹ Similarly, Rule of Practice 100(c) establishes that "[t]he Commission, upon its determination that to do so would serve the interests of justice . . . may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an

⁷ *In the Matter of Millenium Partners et al.*, Rel. No. 34-78364 (July 19, 2016).

⁸ See Brief in Support of Motion to Modify Ordered Undertakings in Administrative Proceeding, pg. 6.

⁹ 17 C.F.R. § 201.200(d)(1) and Rule of Practice Comment (d) to Rule 200, 60 Fed. Reg. 32738, 32757 (June 23, 1995).

otherwise applicable rule is unnecessary.”¹⁰ The significantly disparate treatment of Northwestern Mutual and the firms that were part of the January 2025 Orders, is precisely the situation envisioned by Rule of Practice 200(d)(1) and, in accordance with Rule of Practice 100(c), it “would serve the interests of justice” to grant Northwestern Mutual’s Motion to Modify and equalize the sanctions imposed on firms in the off-channel communications initiative. As the Commission did in *Millenium Partners*, the Commission should grant Northwestern Mutual’s Motion to Modify.

b. Failure to grant the Motion to Modify undermines the Commission’s efficiency and legitimacy.

The Division alleges that granting the Motion to Modify would “open the floodgates—inviting other respondents to relitigate. . . and, thus, would undermine the finality of the Commission’s orders and the efficacy of the Commission’s enforcement program.”¹¹ But it is the significantly disparate treatment of similarly situated firms for equivalent violations and materially indistinguishable conduct that undermines the efficiency and legitimacy of the enforcement program. It signals to firms that instead of cooperating and settling expeditiously, they are better off prolonging the process and delaying resolution.

The Division’s claim also ignores the Commission own history. For decades, the Commission has granted relief analogous to that which Northwestern Mutual is seeking without causing harm to the efficacy of the Commission’s enforcement program. In unique situations, as is the case here, targeted modifications are warranted – and pose no risk to settled actions because they only allow for subsequent adjustment in those unique situations. Treating firms, particularly those in the same initiative, with consistency serves to promote cooperation and the

¹⁰ 17 C.F.R. § 201.100(c)

¹¹ See Division of Enforcement Opposition to Respondents Motion to Modify, pg. 2.

prompt resolution of enforcement violations. In effectuating the off-channel communications initiative, the Division followed this approach until January 2025 by requiring uniform, non-negotiable terms of settlement. In deviating from this approach in January 2025, the Division is encouraging behavior that will be counterproductive to the Commission's enforcement program and will cost the Commission more in time and resources to enforce future initiatives. The Commission must equalize the prospective undertakings to avoid further jeopardizing the Commission's efficiency and legitimacy.

III. CONCLUSION

For the foregoing reasons, the Commission should grant Northwestern Mutual's Motion to Modify Ordered Undertakings in Administrative Proceeding.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to Commission Rules of Practice 150 and 151, I certify that on March 18, 2025, I filed this document using the eFAP system, and that a true and correct copy was served the following persons via electronic mail.:

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CERTIFICATE OF COMPLIANCE

Pursuant to Commission Rule of Practice 151(e), I certify that on March 18, 2025, I have omitted any sensitive personal information, as required by Commission Rule of Practice 151(e)(3) from this filing.



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