U.S. SECURITIES AND EXCHANGE COMMISSION

In the Matter of APEX CLEARING CORPORATION, Respondent.	**File No. 3-21998** **MOTION TO MODIFY ORDERED UNDERTAKINGS IN ADMINISTRATIVE PROCEEDING, STAY EFFECTIVENESS OF UNDERTAKINGS, AND FOR ADMINISTRATIVE STAY**

Apex Clearing Corporation ("Apex") 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 6, Paragraphs 27 through 29, Paragraph 31, Paragraph 32, and Section IV(C) of the Commission's order entered in Administrative Proceeding File No. 3-21998, dated August 14, 2024 (the "Order").

In addition, pursuant to Rule 401 of the Commission's Rules of Practice, Apex respectfully moves (i) for the Commission to stay the effectiveness of Paragraphs 27 through 29 and Section IV(C) of the Order pending the Commission's disposition of this motion to modify the undertakings imposed pursuant to Paragraph 6, Paragraphs 27 through 29, Paragraph 31, Paragraph 32, and Section IV(C) of the Order and (ii) for the Commission to enter an administrative stay pending its disposition of Apex's motion to stay.

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

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U.S. SECURITIES AND EXCHANGE COMMISSION

In the Matter of APEX CLEARING CORPORATION, Respondent.	**File No. 3-21998**

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

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Apex Clearing Corporation ("Apex") 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 August 14, 2024, the Commission entered an order instituting proceedings, making findings, and imposing sanctions and a cease-and-desist order in Administrative Proceeding File No. 3-21998 (the "Order") in connection with an offer of settlement submitted to the Commission by Apex. In its offer, Apex 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 Apex to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, censured Apex, ordered Apex to comply with twenty-three paragraphs or subparagraphs of enumerated undertakings (the "Ordered Undertakings"), and imposed a civil money penalty of $6 million.[2] Apex promptly paid its civil money penalty pursuant to the Order and began complying with the other sanctions imposed by the Order.

On the same day the Commission issued the Order, it issued substantially similar orders instituting settled administrative actions for materially similar violations of the same recordkeeping provisions of the federal securities laws against multiple other firms that are registered with the Commission as broker-dealers or dually registered with the Commission as

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

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

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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 Apex 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 90 broker-dealers or dually registered broker-dealer/investment advisers 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 or dually registered as a broker-dealer and investment adviser.[5]

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[3] *See* Sec. & Exch. Comm'n, *Twenty-Six Firms to Pay More Than $390 Million Combined to Settle SEC's Charges for Widespread Recordkeeping Failures*, Press Release No. 2024-98 (Aug. 14, 2024). The twenty-sixth firm that settled that day was P. Schoenfeld Asset Management, LP, which is registered with the Commission solely as an investment adviser. *See In the Matter of P. Schoenfeld Asset Management, LP*, Rel. No. IAA-6652 (Aug. 14, 2024).

[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 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.

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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] They did so in two principal ways.

First, 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.

Second, unlike the prior settlements, the ordering clauses of the January 2025 Orders did not order compliance with the enumerated undertakings. Because the January 2025 Orders did not order compliance with their enumerated undertakings, they did not require settling broker-dealers to submit a full application for continuing FINRA membership (an "MC-400A

[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.

Application"), which Apex and other firms with ordered undertakings were required to do.[8] Approval of the MC-400A Application in turn leads to the mandatory imposition by FINRA of a plan of heightened supervision on each firm subject to ordered undertakings—while those broker-dealers with January 2025 Orders will not have to file a MC-400A Application, and in turn will not be subject to any heightened supervision plan or years of continuing additional oversight by FINRA.[9] The plans of heightened supervision require, among other things, costly and burdensome training, disclosures, and recordkeeping not otherwise required by the Commission's undertakings, with ongoing examination and supervision by FINRA for a period of six additional years.[10] As a result, Apex is subject to ongoing sanctions and attendant collateral consequences that flow from the sanctions imposed by the Order—consequences 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, Apex has devoted significant time and resources to comply with its Ordered Undertakings and the collateral consequences that are triggered by them. Apex expects to continue to incur substantial additional costs and burdens over the next several years as a result

[8] Willful violations of the federal securities laws or a failure reasonably to supervise a firm's employees within the meaning of Section 15(b)(4)(E) of the Exchange Act each constitute a statutory disqualification under Section 3(a)(39) and Section 15(b)(4)(D) and (E) of that act ("15(b)(4)(D) & (E) Disqualifications"). Firms subject to a statutory disqualification under the Exchange Act must "obtain approval from FINRA to enter or remain in the securities industry." FINRA Regulatory Notice 09-19. However, for 15(b)(4)(D) & (E) Disqualifications, "if [a] sanction is no longer in effect, no [MC-400A] application [is] required," but "if [a] sanction is still in effect, then [an MC-400A] application [is] required." FINRA Regulatory Notice 09-19, Appendix B. FINRA considers ordered undertakings (like those in the Order) to be sanctions that are still in effect, therefore requiring the filing of an MC-400A application. However, if compliance with undertakings is not ordered by the Commission in an ordering clause of an administrative order (like the January 2025 Orders), then for FINRA purposes, sanctions are not still in effect, and no MC-400A application needs to be filed.

[9] Pursuant to FINRA Rule 9523(b), "after an [MC-400A] application is filed," continued FINRA membership may be approved, but only "pursuant to a supervisory plan" that imposes additional regulatory requirements on settling firms. If an MC-400A application does not need to be filed (because there are no ongoing sanctions from ordered undertakings), no supervisory plan will be imposed as a condition of continuing FINRA membership.

[10] The six-year period begins 30 days after FINRA submits a Rule 19h–1 notice of continuing membership, unless FINRA is otherwise notified by the SEC.

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,[11] 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."[12] That standard is met here. Apex must comply with the Ordered Undertakings, and that obligation and the follow-on collateral consequences will, for years, place substantially more costs and burdens on Apex compared to those resulting from the undertakings enumerated in the January 2025 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 Apex 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 condition of settlement imposed on settling

[11] *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").

[12] 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]").

broker-dealers or 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.[13] And they should be no more burdensome than necessary to remedy the relevant misconduct.[14] 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 by broker-dealers or firms dually registered as broker-dealers and investment advisers. Instead, as the January 2025 Orders indicate, the Commission has concluded that the issues addressed in these settled actions, which are common across all broker-dealers or dually registered broker-dealers/investment advisers, can be appropriately addressed without such burdensome undertakings.

Commission precedent supports granting Apex'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

[13] *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.").

[14] *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).

participants.[15] 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."[16] The Commission has similarly modified sanctions imposed against several other firms.[17] The Commission's modifications of the undertakings imposed in those orders supports Apex's motion here.

Modification of Apex'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

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[15] *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").

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

[17] *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).

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than one occasion, sanctions imposed by the Commission that are "out of line with the agency's decisions in other cases"[18] involving "comparable situations" invite judicial challenges that the Commission's disparate treatment is arbitrary and capricious.[19] There is no reasonable basis for different sanctions to be imposed on similar firms for similar misconduct as part of the same enforcement initiative,[20] 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.[21]

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.[22] 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 suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest."[23]

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

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

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

[21] 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.

[22] *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.").

[23] *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).

Whether a stay is warranted depends "on a weighing of the strengths of these four factors."[24] Because it is a multi-factor balancing test, "not all four factors must favor a stay for a stay to be granted."[25] Further, not all factors are weighted equally. Rather, "[t]he first two factors are the most critical,"[26] 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."[27] 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, Apex 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.[28]

Second, Apex 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.'"[29] Apex continues to devote substantial time and resources to comply with the ongoing obligations imposed by the Ordered Undertakings, including prospective compliance

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

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

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

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

[28] *See supra*, nn.17 & 18 (providing examples).

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

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with the Ordered Undertakings and FINRA's plan of supervision. Those costs cannot be recouped after the fact, in litigation or otherwise. Further, imminent deadlines associated with the Ordered Undertakings or FINRA's plan of supervision continue to approach in the coming days or 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 Apex'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 Apex 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.[30] Indeed, the public interest is disserved when disparate sanctions are imposed on similarly situated respondents.[31] Further, the January 2025 Orders demonstrate that the Ordered Undertakings are not necessary to protect the public interest.

Accordingly, each factor strongly supports Apex's motion to stay the effectiveness of the Ordered Undertakings.[32]

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[30] *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).

[31] *See id.*

[32] 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*

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.[33] 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 . . . ."[34]

Conclusion

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

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).

[33] *See In the Matter of Minim, Inc.*, Rel. No. 34-101502, at 1 (Nov. 1, 2024) (Commission order issuing administrative stay).

[34] *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.32.

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CERTIFICATE OF SERVICE

Pursuant to Commission Rule of Practice 150 and 151, I certify that on January 30, 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 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.

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