UNITED STATES OF AMERICA
Before the
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of **GHS Investments, LLC, Mark S. Grober, Sarfraz S. Hajee, and Matthew L. Schissler** **Respondents.**	Admin. Proc. File No. 3-22020 ORAL ARGUMENT REQUESTED

RESPONDENTS' REPLY BRIEF IN SUPPORT OF MOTION TO VACATE OR MODIFY AND STAY ORDER INSTITUTING PROCEEDINGS AND CEASE-AND-DESIST ORDER

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PRELIMINARY STATEMENT

Enforcement's opposition brief is premised on a mischaracterization and evasion of Respondents' "main argument."[1] Enforcement insists that Respondents are arguing that similarly situated parties have received "better outcomes" and so Respondents want "a better deal." Enforcement combines that misstatement of Respondents' position with vague allusions to "floodgates" and "finality" to argue that Respondents are seeking "extraordinary relief" that is not warranted under these circumstances. According to Enforcement, it was Respondents who made the mistake here, failing properly to assess the "loss or gain from entering into a settlement agreement."[2] Respondents supposedly made a "free bilateral" decision to settle and that *alone*, Enforcement claims, supports its argument that the Commission should deny Respondents' motion.[3]

Enforcement's description of Respondents' position is plainly wrong, so much so that its brief appears to be a response to a motion in a different case. Specifically, Respondents focused on the leading case of *Rufo* and related authority and demonstrated that the SEC's abandonment of the legal theory on which the Order was based constitutes a change in circumstances that warrants and compels a vacatur of the Order. Enforcement fails even to acknowledge much less address the decision in *Rufo* or Respondents' actual arguments. It offers no response to the issue squarely presented by Respondents: do the SEC's turnabouts on the definition of dealer constitute changed circumstances that fall within the language and reasoning in *Rufo*?

Here, the SEC devised a new definition of dealer and, in classic "regulation by enforcement" style, began aggressively claiming violations of the securities laws based on conduct

[1] Enforcement Opposition Brief ("Enf.Br.") at 3.
[2] *Id.* at 5.
[3] *Id.* at 5-6.

of the Respondents that occurred *before* the SEC came up with the new definition. The SEC then ended up doing a U-turn, abandoning its new interpretation and making clear that CVRN transactions are permissible. In fact, while Enforcement anchors into finality here, it went as far as petitioning the Appellate Court in *Carebourn* to remand a district court decision which had been entered in the SEC's favor.

The SEC's machinations on this issue are not reasonable; rather, they have been "capricious," arbitrary and fundamentally unfair to market participants.[4] Enforcement's rewriting of the "dealer" definition, its retroactive application, and then its abandonment do not constitute deliberate and responsible means of regulating the industry and should not have occurred. But Enforcement is determined to leave in place the penalties that it imposed on GHS in the midst of its equivocation and effectively ignores the ongoing and significant harm being unfairly imposed on GHS by the Order. While all the damage cannot be undone, the Commission can and should alleviate the perpetuating harm by vacating the Order that no longer reflects the law. It should not permit Enforcement to use semantics to disguise the fact that there has been a change in or "clarification" of the relevant statute that falls well within the language and intent of *Rufo* and its progeny. Those changed circumstances have and continue to work a substantial hardship on GHS and its principals that is inappropriate and inequitable. Given these highly unusual and compelling circumstances, the Commission should grant the relief sought by Respondents.

[4] As stated by Commissioner Uyeda, the "Supreme Court has recognized 'the fundamental principle that laws regulating persons or entities must give fair notice of what conduct is required or proscribed.' The Commission's action against GHS did not satisfy this principle." Commissioner Mark T. Uyeda's Statement Regarding GHS Investments, LLC issued on August 19, 2024, *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-ghs-investments.

ARGUMENT

I. Enforcement's Assertions Are Irrelevant and Misleading

Enforcement invokes the word "extraordinary" in relation to relief under Rule 60 as if it were an insurmountable obstacle that entitles the SEC to hold on to a settlement procured from Respondents in the midst of Enforcement's paradoxical and inconsistent position.[5] Contrary to Enforcement's argument, the relevant authorities state that there must be "compelling circumstances" to justify vacating a settlement. And even the authorities cited by Enforcement underscore the point that vacatur of settlements may be warranted by "equitable and policy considerations."[6] Most importantly, Enforcement does not acknowledge that *Rufo* and other authorities have described in detail the types of circumstances that are "compelling" and warrant relief or that Respondents have demonstrated that those circumstances are present here.[7]

Enforcement combines its misstatement of Respondents' argument with a mischaracterization of the purported "negotiation" and settlement in this case. Enforcement relies on authorities that deal with a party's "voluntary," "deliberate, strategic choice" and "free, bilateral decision" to settle accompanied by *nothing other* than regret based on the parties' "failure to properly estimate the loss or gain from entering a settlement."[8] Neither of those circumstances exist in this case. While Respondents did ultimately agree to the settlement, it was unquestionably the result of potent threats from Enforcement that they either accept the offered settlement or face an enforcement action. More importantly, this motion is *not* based on a failure by Respondents to

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[5] Enf.Br. at 4-5.
[6] *Id.* at 5.
[7] *See Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (Rule 60(b)(5) "encompasses the traditional power of a court of equity to modify its decree in light of changed circumstances"; "district courts should apply a 'flexible standard' to the modification of consent decrees when a significant change in facts or law warrants their amendment"). See also 11 Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 2863, at 454-56 & n.13 (3d ed. 2012).
[8] Enf.Br. at 5.

assess the consequences of the settlement. It is instead based on *the SEC's conduct* including the facts that it decided to regulate by enforcement, then obtained the settlement by representing to GHS that it was not backing away from its new dealer definition and that it would continue to pursue Respondents and others based on that definition, and then *immediately* did the exact opposite. Those are the decidedly different and compelling circumstances that form the basis for Respondents' motion and support its requested relief.

II. Enforcement Does Not Refute or Even Address the Fact and the Impact of its Changes in Position

Enforcement does not dispute Respondents' assertions that the "SEC has communicated that it would no longer assert the legal interpretation of the relevant statute that underlies the order" and has confirmed that position "publicly."[9] But Enforcement fails completely to engage with the impact of that conduct and the import of *Rufo* and other cases cited by Respondents. Enforcement fails to dispute that the circumstances in this case constitute a change in or clarification of the law, well recognized in the cases as a basis for vacatur or modification of a settlement. Nor could it. Respondents cited a consistent line of cases confirming that vacatur of an order is appropriate based on subsequent events that made "legal what the decree was designed to prevent."[10] Courts have confirmed not only that such a change supports a grant of relief but also that "it is an abuse of discretion to deny a modification of an injunction after the law underlying the order changes **to permit what was previously forbidden**."[11] Courts have reasoned that, where the conduct at issue

[9] *Id.* at 6.
[10] *Theriault v. Smith*, 523 F.2d 601, 601 (1st Cir. 1975) (holding that "reinterpretation" of statute "represented a fundamental change in the legal predicates of the consent decree.").
[11] *June Medical Services, L.L.C. v. Phillips*, 640 F. Supp. 3d 523, 534 (M.D. La. 2022).

has become permissible, it would be improper to compel the movant "to continue to adhere to an injunction based on a legal duty that has since disappeared."[12]

The applicability of these decisions was clear from the SEC's own withdrawal of its appeal and its statements in *SEC v. Carebourn Capital L.P.*, No. 21-cv-2114 (D. Minn.) (SEC Mot. to Dismiss, ECF No. 249) – a case that Enforcement failed to distinguish and that belies any argument by Enforcement that issues of "finality" preclude relief. In that case, Enforcement properly confirmed, in its request for remand and its motion to dismiss its case, that "***further litigation is no longer appropriate*** in light of the dismissals of other unregistered dealer cases or claims alleging violations of Exchange Act Section 15(a) under facts similar to those in this case."[13] The same applies here and illustrates the error of leaving in place an Order that would have no proper prospective application.[14]

These and other decisions discussed by Respondents together with the compelling set of facts in this case provide a clear, consistent and compelling basis for the relief sought. Instead of addressing those decisions or the established factors that courts have repeatedly confirmed will warrant vacatur or modification of a settlement, Enforcement vaguely alludes to the language in its stipulations that the dismissal "does not necessarily reflect the Commission's position on any other case."[15] And it relies, again, on inapposite authority denying relief because "the only changed circumstance they identify is that later parties negotiated what Respondents believe to be better

[12] *California v. U.S. EPA (Becerra)*, 978 F.3d 708, 719 (9th Cir. 2020) (held that it was an abuse of discretion for the lower court to refuse to modify an injunction that was "based solely on law that has since been altered to permit what was previously forbidden.").
[13] *SEC v. Carebourn Capital, L.P.*, No. 21-cv-2114, ECF No. 249, at 1 (D. Minn. Sept. 10, 2025).
[14] *See SEC v. Warren*, 583 F.2d 115, 122 (3d Cir. 1978) (affirming dissolution of injunction based on both business consequences and a subsequent change in securities regulation that "diminished the need for administrative enforcement by contempt.").
[15] Enf.Br. at 7.

settlement terms."[16] Rather than attempting to counter Respondents' discussion of the changed circumstances that are present *in this case,* Enforcement reverts to its assertion that a desire for a better outcome does not "justify overturning an agreed-to settlement over another party's objection" and points to the decision in the *Off-Channel Communications* matter. That decision, however, involves circumstances that differ from this case in every critical respect. First, it involved instances of conduct that were plainly prohibited at the time, not a novel and retroactive application of a new and ultimately debunked interpretation of a statute. And the motions in that case were denied *precisely because* the only circumstance those respondents identified was that later-settling parties had obtained more favorable terms, not a substantial change in the law that made "legal what the decree was designed to prevent."

In stark contrast to *Off-Channel* and other cases cited by Enforcement, there exist in this case two dramatic changes in the interpretation and application of the relevant law within a short period of time. Enforcement fails to acknowledge or challenge the arguments and authorities that address that circumstance, highlighting the strength of Respondents' position and supporting a grant of the relief sought.

III. Enforcement Misstates to the Commission the Constraints on GHS's Business

The SEC's changes of position have been so paradoxical that even Enforcement appears to misunderstand or simply mischaracterize its impact. In response to Respondents' requests for relief, Enforcement claims that "nothing in the Settled OIP's undertakings prohibits GHS from

[16] *Id.* at 7-8. Enforcement has previously argued that its actions constitute a change in policy, not a change in law. Enforcement should not be permitted to rely on semantics where, as here, it was engaged in "regulation by enforcement" as opposed to properly propounding a new rule for notice and comment. That mechanism of enforcing a new definition – and then not enforcing – is the SEC's way of changing the governing law.

engaging in future convertible variable rate financings."[17] Therefore, Enforcement claims, Respondents' request for relief is "superfluous."

Enforcement appears again to fail to acknowledge the arguments contained in the motion and the position in which Respondents have been placed. As Enforcement concedes, the OIP required GHS to engage an ICC "to ensure that GHS and its personnel comply with Section 15(a)(1) of the Exchange Act."[18] As Enforcement also points out, that OIP charged GHS with a "violation of Section 15(a)(1) by operating as an unregistered securities dealer" through its sales of stock from convertible notes.[19] And the Order prohibits "future violations of Section 15(a)(1)."[20] Further, the ICC that was engaged to ensure that GHS "compl[ies] with section 15(a)(1)" had to incorporate into GHS's policies and procedures a prohibition on the transactions in which GHS had previously engaged, and in her declaration confirms that compliance with the Order and undertakings necessitated adoption of those prohibitions. Declaration of Pamela Rockley.

It is in that context that Enforcement argues that the Order describes such transactions as violations of the Exchange Act but does ***not*** prohibit precisely that same conduct.

Enforcement's view that the Order and undertakings do *not* prohibit convertible variable rate financings appears inconsistent with the Order and with the steps that GHS had to take to comply with the Undertakings. The only way that GHS can operate in the future and engage in the transactions that Enforcement says are *not* prohibited, without running the risk of claims that it violated the Order, is to obtain vacatur of the Order that defines the CVRN transactions as a violation and prohibits them. Further, Enforcement disregards the harm inflicted on the firm and its principals in terms of both their business and reputation. Only through a grant of the relief

[17] Enf.Br. at 9.
[18] *Id.* at 9–10.
[19] *Id.* at 1.
[20] *Id.* at 2.

sought by Respondents can they begin to repair the damage done and, going forward, return to conducting business now freely conducted by others in the industry. Here, as in *Rufo*, there has been "a significant change either in factual conditions or in law" that cause it to be “no longer equitable that the judgment should have prospective application."[21]

CONCLUSION

Respondents have set forth precisely the kind of "significant change ... in law" that Rufo and its progeny recognize as a compelling basis for vacatur. Enforcement's brief does not engage with that change, does not engage with Rufo, and does not dispute that the SEC has abandoned the legal theory on which the Order rests. Instead, Enforcement retreats to "finality" and "extraordinary circumstances" — invocations that ring hollow when the Commission itself has confirmed, in the very cases on which Respondents rely, that further enforcement of this same legal theory "is no longer appropriate." Respondents respectfully request that the Commission vacate the Order, or in the alternative modify it as set forth in Respondents' motion, and stay the Order pending resolution of this motion.

Dated: May 11, 2026

Respectfully submitted,

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[21] *Rufo*, 502 U.S. at 383.

CERTIFICATE OF SERVICE

Pursuant to Commission Rules of Practice 150 and 151, I certify that on May 11, 2026 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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