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

ADMINISTRATIVE PROCEEDING
File No. 3-22165

In the Matter of **Invesco Distributors, Inc. and Invesco Advisers, Inc.,** **Respondent.**	**DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENTS' MOTION TO AMEND ORDER INSTITUTING PROCEEDINGS AND MOTION TO STAY IMPLEMENTATION OF ORDER INSTITUTING PROCEEDINGS**

The Division of Enforcement ("Division") respectfully submits this opposition to Respondents Invesco Distributors, Inc.'s ("IDI") and Invesco Advisers, Inc.'s ("IAI," and collectively with IDI, "Respondents") Motion to Amend Order Instituting Proceedings ("Motion to Amend") and Motion to Stay Implementation of Order Instituting Proceedings ("Motion to Stay," and collectively with the Motion to Amend, "Motions"). The Commission should deny Respondents' Motions 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 September 24, 2024, the Commission instituted a settled Order Instituting Administrative Proceedings ("Settled OIP") against Respondents, in which IDI 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 IAI admitted that it willfully 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' communications on personal devices ("off-channel

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communications") that were required to be preserved under those Rules. Respondents also admitted that they failed reasonably to supervise their personnel pursuant to Section 15(b)(4)(E) of the Exchange Act as to IDI and Section 203(e)(6) of the Advisers Act as to IAI. 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 each Respondent was represented by sophisticated counsel. The Commission ordered these undertakings upon its acceptance of Respondents' formal written settlement offers, which resolved the Division's investigation of those violations. Respondents now seek: (1) the Commission's permission to back out of those agreements; and (2) a stay of the undertakings ordered in the Settled OIPs pending the resolution of its Motion to Amend. The Commission should deny Respondents' Motions in full because Respondents fail to offer an adequate basis in law or fact to support their Motions 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 agreements 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. The Commission also should deny Respondents' Motion to Stay pending the outcome of their Motion to Amend as procedurally improper and, in any event, not warranted here.

ARGUMENT

I. 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

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); *In the Matter of Inviva, Inc., et al.* Exch. Act Rel. No. 59674, 2009 WL 863595 at *1 (April 1, 2009) (relief granted more than four

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years after original order); *In the Matter of Franklin Advisers, Inc.*, Adv. Act Rel. No. 2906, 2009 WL 2168897, at *1 (July 20, 2009) (relief granted more than four years after original order); *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 Settled 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 mere months after agreeing to perform them. The Commission should not incentivize respondents to seek such relief.

II. The Commission Should Deny Respondents' Motion to Stay Implementation of the Order Instituting Proceedings

The Commission also should deny Respondents' request to stay its obligations under the undertakings in the Settled OIP pending resolution of its Motion to Amend. Respondents' stay request has no basis in the Commission's Rules of Practice or other precedent cited.

Respondents invoke Rule 401(c), but that Rule applies only to stays pending appeals to the Commission or a federal court. *See*, *e.g.*, *In the Matter of the Application of Scottsdale Cap. Advisors Corp.*, Exch. Act Rel. No. 83783, 2018 WL 3738189 (Aug. 6, 2018) (cited by Respondents and granting a stay pending appeal to Commission of FINRA determination); *In the Matter of Micah J. Eldred.*, Exch. Act Rel. No. 96083, 2022 WL 9195015, at *1 (Oct. 14, 2022) (noting Rule 401 was improper for a stay request where there was no final Commission Order reviewable by a federal court of appeals).

Even if Rule 401 were applicable, Respondents cannot satisfy the well-established requirements for the "'extraordinary remedy" of a stay. *Scottsdale*, 2018 WL 3738189, at *2 (internal citations omitted). "The Commission considers whether (i) there is a strong likelihood that the moving party will eventually succeed on the merits of the appeal; (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." *Id.*

First, for the reasons set forth above, Respondents cannot show "a strong likelihood that [they] will eventually succeed on the merits." *Scottsdale*, 2018 WL 3738189, at *2 (movant under 401 "must at least show that it has . . . 'raised a serious legal question on the merits'") (quoting *In the Matter of the Application of Bruce Zipper for Rev. of Action Taken by FINRA*, Exch. Act Rel. No. 82158, 2017 WL 5712555, at *6 (Nov. 27, 2017)). As explained above, as a matter of law, Respondents' request to vacate a negotiated and settled Commission OIP faces an extremely high legal bar—one that Respondents are highly unlikely to overcome.

Respondents also have failed to allege that they will suffer irreparable harm without a stay. Respondents argue that they are "currently in the process of dedicating significant financial and personnel resources to fulfill several obligations" under the Settled OIP; and that they

"expect[] to expend significant resources to complete this work." (Motion to Stay, p. 6.) However, "the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay." *Scottsdale*, 2018 WL 3738189, at *3 (quoting *In the Matter of the Application of Robert J. Prager*, Exch. Act Rel. No. 50634, 2004 WL 2480717, at *1 (Nov. 4, 2004)). Respondents' purported injury of expecting to spend "significant resources" falls far short of the injury cited in *Scottsdale*—where the respondent established irreparable harm by presenting credible evidence that, absent a stay, his businesses would have to "cut staff" and "likely become insolvent," "causing the loss of a large percentage of jobs," and threatening or significantly limiting ongoing operations. *Scottsdale*, 2018 WL 3738189, at *3-4.

These "first two factors are the most critical," *Scottsdale*, 2018 WL 3738189, at *2, but Respondents fare no better on the third and fourth factors. Respondents' argument—that "no party would suffer any harm from a stay" (Motion to Stay at pp. 6-7)—is based on the faulty assumption that the investor protections implicit in the undertakings are unnecessary. Relatedly, the ordered undertakings are specifically designed to address Respondents' admitted recordkeeping and supervision failures, which persisted over a long period of time and throughout Respondents' organizations. The undertakings serve to ensure that remedial measures are promptly undertaken to correct these failures. The public interest is served when firms comply with their obligations under the securities laws—indeed, such compliance helps to ensure fair, transparent markets. Moreover, the public has a strong interest in the finality of Commission settlements, and a stay would serve only to undermine the credibility and effectiveness of the Commission's orders.

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Conclusion

For the foregoing reasons, the Commission should deny Respondents' Motions in their entirety.

Dated: February 11, 2025

Respectfully Submitted,

[redacted]

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Pursuant to Commission Rule of Practice 150 and 151, I certify that on February 10, 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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