UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19816

In the Matter of

BITCLAVE PTE LTD.,

Respondent.

DIVISION OF ENFORCEMENT'S BRIEF IN OPPOSITION TO MOTION FOR RELIEF FROM SETTLED ORDER

The Division of Enforcement ("Division") respectfully submits this Brief in Opposition to Respondent BitClave Pte Ltd.'s ("Respondent" or "BitClave") March 18, 2025, Motion for Relief from Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (the "Motion for Relief").

Respondent seeks relief from a May 28, 2020, Order Instituting Proceedings (the "Settled OIP") in which the Commission accepted a settlement offer proposed by Respondent that included disgorgement of $25.5 million, plus prejudgment interest and a civil penalty, for a total payment of over $29.3 million. In the Settled OIP, the Commission also ordered the establishment of a Fair Fund and, consistent with Respondent's settlement offer, provided that any amount remaining in the Fair Fund after disbursements to compensate injured investors would be transferred to the U.S. Treasury. Respondent acknowledges having paid only approximately $12 million, or around 40% of the amount due, and that around $4.6 million has been distributed from the Fair Fund to harmed

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investors so far. Respondent now asks that the remaining funds be returned to Respondent rather than transferred to the U.S. Treasury. Such a request is premature because the Fund Administrator may seek subsequent distribution of remaining funds. Moreover, Respondent's request is contrary to the express terms of its own settlement offer and the Settled OIP, and Respondent fails to demonstrate any compelling circumstances warranting the extraordinary relief sought. The Motion for Relief should be denied.

BACKGROUND

A. The Settled OIP

On May 28, 2020, the Commission instituted administrative cease-and-desist proceedings against Respondent pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"). (*BitClave PTE Ltd.*, Release No. 10788, 2020 WL 2791424 (May 28, 2020).) The Settled OIP stated that Respondent had submitted an offer of settlement in anticipation of the institution of the proceedings and that Respondent consented to the entry and terms of the Settled OIP. (*See* Settled OIP at 1, 6-7.) Respondent's settlement offer is attached hereto as Exhibit A.

The Commission made factual findings in the Settled OIP pursuant to Respondent's offer of settlement (Settled OIP at 1-2), including the following, among others. Respondent was an "early-stage blockchain services company" located in California that, starting in June 2017, raised approximately $25.5 million from 9,500 investors in an "initial coin offering" for a crypto asset called "CAT." (*Id*. at 2.) Respondent described the offering as a "fundraiser" in which proceeds from the sale of CAT would be used to develop, administer, and market a nascent software platform called the BitClave Active Search Ecosystem, or "BASE." (*Id*. at 2-4.) Respondent's marketing materials claimed that

businesses would be able to use BASE to directly market their goods and services to customers, who would receive CAT in exchange for viewing and interacting with business advertisements. (*Id*. at 2-3.) Respondent emphasized in its marketing materials that the price of CAT, which would trade on crypto asset platforms, was expected to appreciate in a "general growth model for CAT value" as more businesses participated on the BASE platform. (*Id*. at 4.) Respondent distributed a video during the offering in which an investor in CAT promoted its "profit potential." (*Id*.) After the offering was complete in November 2017, Respondent contacted over a dozen digital asset trading platforms with requests that CAT be made available for trading. (*Id*.) No registration statements were filed or in effect for Respondent's offers and sales of CAT, which were offered and sold as investment contracts. (*Id*. at 5.)

By mid-2019, a number of the crypto asset trading platforms that had listed CAT had removed the token. (Settled OIP at 4.) In November 2019, a California jury found that a co-founder of Respondent and an affiliated entity had misused company funds that had been raised in the CAT offering, and Respondent was awarded a judgment against its co-founder and the affiliated entity of $7.6 million for conversion, and $2.5 million each for fraud and breach of fiduciary duty. (*Id*. at 5.) By the time of the settlement in May 2020, Respondent had determined that its business plan would not be viable and it was in the process of winding down its operations; it no longer planned to continue developing the BASE platform. (*Id*.)

The Commission determined that Respondent violated Sections 5(a) and 5(c) of the Securities Act by offering and selling securities without having a registration statement filed or in effect with the Commission or qualifying for an exemption from registration.

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(Settled OIP at 2, 5.) The Commission imposed the sanctions "agreed to in Respondent's Offer" including, among others: (a) disgorgement of $25.5 million; (b) prejudgment interest of around $3.4 million; and (c) a civil penalty of $400,000, for a total payment of over $29.3 million. (Settled OIP at 6-7.) Respondent was ordered to pay the first $10 million within 14 days and the remainder within 180 days of entry of the Settled OIP. (*Id.* at 7.)

Also in the Settled OIP and as agreed to in Respondent's settlement offer, the Commission ordered the creation of a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for the disgorgement, prejudgment interest, and civil penalty, for the purpose of "compensat[ing] injured investors for losses resulting from the violations . . . and to cover the costs of administration of the Fair Fund." (Settled OIP at 7-8; Exhibit A at 8.) The Settled OIP specified, consistent with Respondent's settlement offer, that "[a]ny amount remaining in the Fair Fund after all distributions have been made and costs have been paid shall be transmitted to the Commission for transfer to the U.S. Treasury." (Settled OIP at 8; Exhibit A at 8.)

B. The Fair Fund Distribution Process

On December 1, 2020, the Commission issued an order appointing a Tax Administrator to handle administration of tax-related obligations of the Fair Fund (*BitClave PTE Ltd.*, Release No. 90545, 2020 WL 7054842 (December 1, 2020)) and on April 22, 2021, the Commission issued an order appointing a Fund Administrator pursuant to Rule 1105(a) of the Commission's Rules of Fair Fund and Disgorgement Plans. (*BitClave PTE Ltd.*, Release No. 91647, 2021 WL 1580393 (April 22, 2021).)

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The Division of Enforcement filed a Notice of Proposed Plan of Distribution and Opportunity to Comment on December 1, 2022 (*BitClave PTE Ltd.*, Release No. 19815, 2022 WL 17401553 (December 1, 2022) ("Notice of Proposed Plan of Distribution"), and made public its Proposed Plan of Distribution ("Proposed Plan of Distribution"). The Notice of Proposed Plan of Distribution invited public comment on the Proposed Plan of Distribution within 30 days. (*Id*. at 2.)

On February 9, 2023, the Commission issued both an Order Approving Corrected Plan of Distribution, noting that the Commission "received no negative comments on the Proposed Plan during the comment period," (*BitClave PTE Ltd.*, Release No. 96869, 2023 WL 1926529, at *1 (February 9, 2023)) ("Order Approving Corrected Plan of Distribution"), and the Corrected Plan of Distribution (the "Plan of Distribution").[1]

The Plan of Distribution provided for distribution from the Fair Fund "to compensate investors who were harmed [by] Respondent's conduct," specifically "based on their losses." (Plan of Distribution at 1.) The Plan of Distribution stated that the Fair Fund included $12 million paid to date by Respondent. (*Id*. at 2.) Claimants were only eligible to receive a payment under the Plan of Distribution if they "suffered a Recognized Loss" meaning, among other things, that "[s]ecurities acquired from the issuer for no monetary consideration . . . [were] not eligible for recovery under the Plan . . . ." (*Id*. at 3-4.)

A Plan of Allocation attached as an exhibit to the Plan of Distribution described how the amount of loss was to be calculated:

[1] The Order Approving Corrected Plan of Distribution noted that the Proposed Plan of Distribution was corrected to fix a scrivener's error regarding the date range for purchases of CAT in which investors may be compensated for their losses. (Order Approving Corrected Plan of Distribution at n.5.)

(a) For each token sold prior to the close of trading on May 27, 2020, the Recognized Loss per token is the purchase price *minus* the sales proceeds.

(b) For each token held as of the close of trading on May 27, 2020, the Recognized Loss per token is the purchase price *minus* $0.000008742 (the deemed value of the Security after the Commission issued the Order against BitClave).

(Plan of Distribution, Exhibit A at 1.)

The Plan of Allocation noted that the figure of $0.000008742 was the closing price of CAT on the day that the SEC announced the Settled OIP. (*Id*. at 1 n.2.) If the calculation described in the Plan of Allocation indicated that the CAT held by any purchaser had gained in value, the Recognized Loss would be $0.00. (*Id*. at 1.)

The Plan of Distribution required that disbursements would only be made pursuant to Commission Order. (Plan of Distribution at 13.) If funds remained following the initial distribution, the Fund Administrator "may seek subsequent distribution of any available remaining funds, pursuant to the Commission's Rules." (*Id*. at 15.)

The Commission specified in the Plan of Distribution exactly what must happen if any remaining funds were "infeasible to distribute to investors." Such funds "will be returned to the Commission and transferred to the U.S. Treasury after the final accounting is approved by the Commission." (Plan of Distribution at 15.) The Plan of Distribution explained the reasoning behind this requirement:

> Returning such money to Respondent would be inconsistent with the equitable principle that no [p]erson should profit from their own wrongdoing. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

(*Id*. at 15-16.)

On November 19, 2024, the Commission issued an Order Directing Disbursement of Fair Fund (*BitClave PTE Ltd.*, Release No. 101653, 2024 WL 4835295 (November 19,

2024)) ("Order Directing Disbursement") authorizing "a total distribution of $4,614,679.81 to harmed investors by the Fund Administrator in accordance with the Plan [of Distribution]." (Order Directing Disbursement at 2.) The Order Directing Disbursement stated that the Fund Administrator had submitted a payment file to the Commission which was reviewed and accepted by Commission staff. (*Id*. at 2.) On November 25, 2024, the Commission ordered that the Fund Administrator be paid $52,460.02 in fees and expenses, and authorized the payment of future fees and expenses from the Fair Fund upon staff approval. (*BitClave PTE Ltd.*, Release No. 101750, 2024 WL 4891411 (November 25, 2024)).

On March 18, 2025, Respondent filed its Motion for Relief asking that any funds remaining in the Fair Fund be returned to Respondent.

Counsel for the Division of Enforcement learned that the Fund Administrator is preparing to seek from the Commission an order authorizing a subsequent distribution, as permitted by the terms of the Plan of Distribution (Plan of Distribution at 15). The Fund Administrator is in the process of verifying claims, seeking additional information from potential claimants, and determining whether potential claims should be accepted or rejected. We anticipate that the Fund Administrator will submit a payment file to Commission staff in the short term using the process outlined at pages 12-14 of the Plan of Distribution.

ARGUMENT

Respondent seeks relief from a provision in the Settled OIP that Respondent expressly "agreed to"; indeed, it was Respondent who "voluntarily" proposed in its settlement offer that "[a]ny amount remaining in the Fair Fund after all distributions have

been made and costs have been paid shall be transmitted to the Commission for transfer to the U.S. Treasury." (Settled OIP at 6, 8; Exhibit A at 8, 11.) Respondent later lodged no objection to the Proposed Plan of Distribution, which reiterated that any funds that were infeasible to distribute to investors would be transferred to the U.S. Treasury and explained why: "Returning such money to Respondent would be inconsistent with the equitable principle that no Person should profit from their own wrongdoing" and therefore "distributing disgorged funds to the U.S. Treasury is the most equitable alternative." (Proposed Plan of Distribution at 15-16; Order Approving Corrected Plan of Distribution at 1.) The Plan of Distribution approved by the Commission contains the same language. (Plan of Distribution at 15-16.)

Respondent now asks the Commission to issue an order that any "leftover disgorged funds" be sent to Respondent rather than to the U.S. Treasury, a request contrary to Respondent's own settlement offer and the Commission's prior orders to which Respondent did not object. Respondent fails to demonstrate any compelling circumstance that would warrant such extraordinary relief. Instead, it appears that Respondent is simply trying to change the terms of its settlement to claw back millions of dollars it agreed should be paid to injured investors or the U.S. Treasury. The Motion for Relief must accordingly be denied.

A. Only Compelling and Extraordinary Circumstances Warrant Modifying a Settled Order

Parties must demonstrate "compelling" or "extraordinary" circumstances to modify a settled order. *Certain Off-Channel Communications Settled Orders*, Release No. 102860, 2025 WL 1101495, at *1 (Apr. 14, 2025), citing *Michael H. Johnson*, Release No. 75894, 2015 WL 5305993, at *4 (Sept. 10, 2015) ("we find no compelling circumstances that

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would justify modifying the bar and eliminating the protections it affords"); *Richard D. Feldmann*, Release No. 77803, 2016 WL 2643450, at *2 (May 10, 2016). *See also Gregory Bolan*, Release No. 85971, 2019 WL 2324336, at *3 (May 30, 2019) (settlements "should be upheld whenever equitable and policy considerations so permit"); *Gregory Osborn*, Release No. 10641, 2019 WL 2324337, at *3 (May 31, 2019) (rejecting collateral attack on a settlement, noting that respondent's "choice [to settle] was a risk, but calculated and deliberate and such as follows a free choice"), quoting *Ackermann v. United States*, 340 U.S. 193, 198 (1950).

This is because the Commission has a "strong interest in maintaining the finality of settlements." *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *1 (citation omitted). "Public policy considerations favor the expeditious disposition of litigation, and a respondent cannot be permitted to follow one course of action and, upon an unfavorable result, to try another course of action." *Johnson*, 2015 WL 5305993, at *4 (cleaned up). *See also Eric David Wanger*, Release No. 81111, 2017 WL2953369, at *4 (July 10, 2017) ("We have a strong interest in the finality of our orders and we have consistently applied the principle set out in Rule 193 to reject collateral attacks that seek to undo the underlying proceeding, the findings in our order, or the terms of settlement.").

A party is not entitled to modification of a final judgment simply because "it is no longer convenient to live with the terms of a consent decree"; rather, there must be a "significant change of circumstances warrant[ing] revision of the decree." *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992), cited by *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *2 n.6. As the Commission recently explained, such circumstances may include situations where "new factual

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conditions make compliance with the decree substantially more onerous; when the consent decree becomes unworkable because of unforeseen obstacles; when enforcement of the decree without modification would be detrimental to the public interest; or when there is a significant change in the law." *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *2 (internal citations omitted), citing *Rufo*, 502 U.S. at 383-85. None of these circumstances are present here.

B. No Circumstances Here Compel Vacating or Modifying the Settled OIP

Respondent raises no argument that the Settled OIP presents previously "unforeseen consequences or obstacles"; nor that "new factual conditions have made compliance substantially more onerous" than anticipated; nor that "continued enforcement of the terms would be detrimental to the public interest." *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *2. Rather, Respondent incorrectly argues that relief from the Settled OIP is warranted for two reasons. First, in Respondent's view, recent case law developments "have clarified that the SEC does not have authority to remit excess disgorged funds to the U.S. Treasury, in light of the equitable principles that govern disgorgement." (Motion for Relief at 5.) Second, Respondent argues that granting its requested relief would be equitable in light of "the SEC's previous lack of clear regulatory guidance for the rapidly evolving digital assets industry" and "the inconsistent treatment of similarly situated digital asset participants." (*Id*. at 14.) For the reasons that follow, none of the circumstances raised come close to compelling the relief sought.

1. No Significant Change in the Law

Respondent incorrectly argues that "[r]ecent case law developments after the SEC issued the [Settled OIP] have clarified that the SEC does not have the authority to remit

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excess disgorged funds to the U.S. Treasury." (Motion for Relief at 5.) Respondent draws the Commission's attention to the Supreme Court's decision in *Liu v. SEC*, 591 U.S. 71 (2020), and the Second Circuit's decision in *SEC v. Govil*, 86 F.4th 89, 102 (2d Cir. 2023). (Motion for Relief at 5-9.) But these decisions do not support Respondent's argument and do not constitute the sort of compelling and extraordinary circumstances that warrant relief.

The Supreme Court in *Liu* identified a "considerable tension" with equity practices in ordering that disgorged funds be distributed to the U.S. Treasury "*instead of*" to "known victims." *Liu*, 591 U.S. at 85, 88 (emphasis added). But *Liu* left as "an open question whether, and to what extent," distribution to the Treasury is permissible under Exchange Act Section 21(d)(5) "where it is infeasible to distribute the collected funds to investors." *Id*. at 89-90. In other words, the *Liu* decision did not change the law on whether disgorgement funds may be distributed to the U.S. Treasury where it would be infeasible to distribute them to investors.

Indeed, since the *Liu* decision, numerous courts have determined that disgorged funds may be distributed to the U.S. Treasury where distribution to investors would be infeasible. *See*, *e.g.*, *SEC v. Spartan Sec. Grp., Ltd.*, 620 F.Supp.3d 1207, 1244 (M.D. Fla. 2022) ("multiple district courts have, post-*Liu*, allowed disgorgement awards to be directed toward the Treasury"); *SEC v. Bronson*, 602 F.Supp.3d 599, 617-18 (S.D.N.Y. Apr. 29, 2022) (rejecting argument that *Liu* does not allow disgorged funds to be sent to the U.S. Treasury); *SEC v. Westport Cap. Markets, LLC*, 547 F.Supp.3d 157, 170 (D. Conn. 2021); *SEC v. Laura*, 2020 WL 8772252, at *5 (E.D.N.Y. Dec. 30, 2020). The Commission has also ordered that remaining funds be sent to the U.S. Treasury when they are infeasible to return to investors. *See*, *e.g.*, *Geneos Wealth Management, Inc.*, Release No. 102642, 2025

WL 798533, at *2 (March 12, 2025) ("Upon approval of the final accounting, all remaining amounts in the Distribution Fund that are infeasible to return to investors, and any funds returned in the future that are infeasible to return to investors, are to be sent to the Treasury.").[2]

Respondent also argues that, under *Govil*, disgorgement must be awarded for victims who suffered pecuniary harm. (Motion for Relief at 6-8.) Respondent appears to suggest that disgorgement was not an available equitable remedy in this case. But there has been no such change in the law. Respondent's argument mischaracterizes the nature and purpose of disgorgement as described by the Supreme Court in *Liu*, which is a "profit-based measure of unjust enrichment" reflecting the foundational principle that "it would be inequitable that [a wrongdoer] should make a profit out of [their] own wrong." *Liu*, 591 U.S. at 79-80. Disgorgement is "tethered to a wrongdoer's net unlawful profits." *Id.* at 80. While damages "compensate the victim for [a] loss," disgorgement deprives a wrongdoer of "ill-gotten profits." *SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC*, 580 U.S. 328, 341-342 (2017). The availability of disgorgement therefore turns on whether the violator has made a profit, not on whether the victim suffered a loss. A court may order a wrongdoer to disgorge wrongful profits "even if the transaction produce[d] no ascertainable injury to the claimant." Restatement (Third) of Restitution and Unjust

[2] Respondent presents no authority to the contrary. Respondent cites *SEC v. Putnam*, 2024 WL 4135684 (D. Utah. Sept. 10, 2024), but in that case the district court determined that "the SEC need not prove the identities of wronged investors before the court orders disgorgement" and otherwise merely noted that the Supreme Court in *Liu* had "left open whether it was consistent with equitable principles for the SEC to deposit disgorgement funds with the Treasury where it is infeasible to distribute the collected funds to investors." *Putnam*, 2024 WL 4135684, at *15. Respondent also cites *SEC v. Johnson*, 2023 WL 2628678, at *19 (C.D. Cal. Feb. 17, 2023), but that case is inapplicable because there, unlike here, the SEC requested that "the proceeds of the fraud be deposited in the United States Treasury *rather than* disbursed to victims." (Emphasis added.) The court in *Johnson* further emphasized that the SEC in that case had not sufficiently demonstrated how such a disgorgement would be "for the benefit of investors." *Id.*

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Enrichment [Section] 51 cmt. d (2011). *See also SEC v. Navallier & Assoc., Inc.*, 108 F.4th 19, 41 (1st Cir. 2024) (rejecting argument that pecuniary harm was a requirement for an award of disgorgement), *cert. denied*, No. 24-949, ___ S. Ct. ___, 2025 WL 1603606 (June 6, 2025).[3]

Respondent's argument also fails on its own terms because, as Respondent acknowledged in its settlement offer, the investors here *did* suffer pecuniary harm: a Fair Fund was created to compensate "injured investors for losses resulting from the violations determined herein . . ." (Exhibit A at 8, Settled OIP at 7-8). The Plan of Distribution (to which Respondent did not object) similarly described its purpose to compensate investors who suffered a "Recognized Loss" in a manner "based on their losses" using a formula that would deduct the sales proceeds of the CAT from the purchase price. (Plan of Distribution at 1, 3-4; Plan of Allocation at 1.)[4]

[3] For these reasons, and as the Commission has already acknowledged in the Plan of Distribution, "distributing disgorged funds to the U.S. Treasury is the most equitable alternative" in the event that it is infeasible to distribute some funds to investors. (Plan of Distribution at 15-16.) "Returning such money to Respondent would be inconsistent with the equitable principle that no [p]erson should profit from their own wrongdoing." (*Id.*) Permitting a wrongdoer to retain ill-gotten gains "would offer a premium to dishonesty." *Providence Rubber Co. v. Goodyear*, 76 U.S. 788, 804 (1869). Under "foundational" equitable principles, allowing Respondent to benefit (rather than distribute remaining funds to the U.S. Treasury) is the worse outcome. *Liu*, 591 U.S. at 80.

[4] This distinguishes the present case from *Govil*, in which the defendant had already agreed to return the misappropriated funds, and thus there was no pecuniary harm to identified investors. *Govil*, 86 F.4th at 95-96. This case is also distinguishable from *SEC v. Ripple Labs, Inc.*, 2024 WL 3730403, at *5 (S.D.N.Y. Aug. 7, 2024) for a similar reason: the court in *Ripple* determined that the SEC had offered only "speculative evidence that the [investors] did not receive the return on the investment contemplated." (Citing *Govil*, 86 F.4th at 104 n.16.) The *Govil* court had reasoned that defrauded investors would have been required to show pecuniary loss had they pursued individual damages claims under the securities laws, and that permitting the SEC to seek disgorgement without making a similar showing would improperly allow the SEC to "circumvent the limitations on private claims." *Id.* at 105. This concern is misplaced, however, because the limitations on private actions to recover damages do not apply to Commission enforcement actions which "remedy harm to the public at large, rather than standing in the shoes of particular injured parties." *Kokesh v. SEC*, 581 U.S. 455, 463 (2017).

Respondent refers to various other settled OIPs involving crypto asset businesses in support of his claim that there has been a significant change in law, highlighting the absence of a disgorgement provision in each of them. (Motion for Relief at 7-8.) But a different party reaching a different or even "better" settlement with the SEC, "is not the type of compelling circumstance that justifies altering the terms of [a] settlement[]." *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *2. As the Commission has explained, "[t]he possibility that a later party in a similar position will receive different or more favorable terms furthers and is not detrimental to the public interest. It gives government authorities flexibility and discretion to resolve future cases and has not, as a matter of experience, deterred persons from entering into settlements." *Id*. "The Commission has long rejected motions to modify or vacate settled orders simply because respondents seek to bring their terms in line with sanctions imposed on other parties." *Id*. *See also United States v. Bownes*, 405 F.3d 634, 636 (7th Cir. 2005) ("By binding oneself [in a contract or plea agreement] one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one."); *Feldmann*, 2016 WL 2643450, at *2; *Johnson*, 2015 WL 5305993, at *4.

Accordingly, there has been no change in the law governing whether any disgorgement funds may be distributed to the U.S. Treasury if it is infeasible to distribute them to investors, much less a "significant" one. *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *2 (internal citations omitted), citing *Rufo*, 502 U.S. at 383-85. Even if there were a change in law, "intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." *Agostini v. Felton*, 521 U.S. 203, 239 (1997). *See also Bronson*, 602 F. Supp.

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3d at 617 ("as a general matter, a mere change in decisional law does not constitute an 'extraordinary circumstance' for the purposes of Rule 60(b)(6)") (citations omitted); *Rufo*, 502 U.S. at 383-92 (noting that a "clarification in the law" does not "automatically" warrant modifying a consent decree because that would "undermine the finality of such agreements and could serve as a disincentive to negotiation of settlements") (cited by *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *2 n.8).

2. No Other Extraordinary or Compelling Circumstances

Respondent argues that modifying the Settled OIP is warranted in light of what Respondent describes as the SEC's "pattern of bringing aggressive enforcement actions against participants in the digital asset industry, while at the same time failing to provide any clarity or guidance as to how industry participants could comply with the federal securities laws in offering their products and services." (Motion for Relief at 10-14.) Respondent refers the Commission to various publications and speeches by Commissioners in support of Respondent's argument that the SEC took a "heavy-handed approach" that was "hostil[e] and unreasonable" to the crypto asset industry to which Respondent, according to the Motion for Relief, "fell victim." (*Id*.) Respondent also cites to two inapplicable judicial decisions, one in which the D.C. Circuit Court of Appeals determined that the SEC's denial of Grayscale Investments' proposed bitcoin exchange-traded product was arbitrary and capricious because the product was "materially similar to [two other] bitcoin futures exchange-traded products" that had earlier been approved, *Grayscale Investments, LLC v. SEC*, 463 F.4th 1239, 1242 (D.C. Cir. 2023), and the other in which the SEC's denial of a rulemaking petition submitted by Coinbase, Inc., was "remand[ed] to the SEC for a more complete explanation," although the court "decline[d] at this stage

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to order the agency to institute rule-making proceedings." *Coinbase, Inc. v. SEC*, 126 F.4th 175, 182 (3d Cir. 2025). Additionally, Respondent describes that the SEC recently created a Crypto Task Force "to provide clarity on the application of the federal securities laws to the crypto asset market and to recommend practical policy measures that aim to foster innovation and protect investors." (Motion for Relief at 12-13.)

None of these various allegations and assertions raised in the Motion for Relief suggest that, in this case, Respondent was treated unfairly when the Commission deemed to accept its offer of settlement, nor do they undermine in any way Respondent's affirmation that the settlement offer was "made voluntarily" and without any "promises, offers, threats, or inducements of any kind . . .". (Exhibit A at 11.)[5]

Equally important, the allegations present no legal justification for modifying the terms of a settled order. As explained above, only significant changes of circumstance rising to the level of compelling or extraordinary justifications warrant modifying a settled order. *Rufo*, 502 U.S. at 383, cited by *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *2 n.6. Respondent raises no argument that the Settled OIP presents previously "unforeseen consequences or obstacles," that "new factual conditions have made compliance substantially more onerous" than anticipated, or that "continued enforcement of the terms would be detrimental to the public interest." *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *2.

Respondent is asking for the return of millions of dollars that it agreed to disgorge to be used to "compensate injured investors" with "[a]ny amount remaining . . . after all

[5] Respondent argues that the SEC did not allege "misrepresentations or fraud" (Motion for Relief at 4, 9, 14), but the Settled OIP included a finding that a jury in California state court returned a verdict against Respondent's co-founder in a case alleging that the co-founder misused investor funds (Settled OIP at 5.)

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distributions have been made . . . transfer[red] to the U.S. Treasury." (Settled OIP at 8, Exhibit A at 8.) Respondent may wish that it had made a different settlement offer or negotiated different settlement terms, but "[t]hat is not the type of compelling circumstance that justifies altering the terms of [its] settlement." *See*, *e.g.*, *Bownes*, 405 F.3d at 636 ("By binding oneself [in a contract or plea agreement] one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one."); *Feldmann*, 2016 WL 2643450, at *2 (rejecting respondent's argument to revise settlement to match the result of litigation respondents); *Johnson*, 2015 WL 5305993, at *4 (rejecting respondent's argument that modification "would make his sanction consistent with the sanctions imposed in other [similar] cases"); *Certain Off-Channel Communications Settled Orders*, 2025 WL 1101495, at *3 ("Settlor's remorse – and a desire to revisit that risk calculus – does not justify upsetting a final, agreed-upon settled order. Otherwise, the key virtue of settling cases – letting the parties move on after they each get some of what they want – would be lost.") (internal citation omitted).

C. The Motion for Relief is Premature

Setting aside that there is no substantive basis to grant the relief that Respondent seeks, the Motion for Relief is also premature. The Division understands that the Fund Administrator is preparing to seek from the Commission an order authorizing a subsequent distribution to injured investors. Such a process is permitted by the terms of the Plan of Distribution, which provides that the Fund Administrator "may seek subsequent distribution of any available remaining funds, pursuant to the Commission's Rules" in the event that funds remained after the initial distribution. (Plan of Distribution at 15.) The Fund Administrator is in the process of verifying claims, seeking additional information

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from potential claimants, and determining whether potential claims should be accepted or rejected. If the Fund Administrator determines that a subsequent distribution should be authorized, we anticipate that the Fund Administrator will submit a payment file to Commission staff.

Accordingly, Respondent is wrong to suggest that there are "[n]o further 'victims' of [Respondent's] alleged wrongdoing." (Motion for Relief at 6, 9.) The remaining funds must be distributed to investors if feasible, consistent with the Plan of Distribution. Then, pursuant to the parties' settlement, any leftover funds should be transferred to the U.S. Treasury.

CONCLUSION

For these reasons, the Division of Enforcement respectfully urges the Commission to deny the Motion for Relief.

Dated: June 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2025, the foregoing document was filed via eFAP and served on the following by the following means:

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CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATION

I hereby certify that on the foregoing document contains approximately 4,880 words and complies with the length limitations of Rule 154(c).

/s/ Michael J. Friedman
Michael J. Friedman