UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
FILE NO. 3-19816

In the Matter of

BITCLAVE PTE LTD.

Respondent.

RESPONDENT BITCLAVE PTE LTD.'S REPLY BRIEF IN SUPPORT OF 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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

The wrongs were weighed, the harms repaid,
No victim left, no debt unpaid.
Yet still the state would clutch the rest,
Though fairness urges what is best.

So when justice calls for balance true,
Let not old orders cloud the view.
For law evolves, and so must we,
To match its course with equity.

I. INTRODUCTION

Respondent BitClave PTE Ltd. ("BitClave") seeks relief from a provision in a May 28, 2020, Order Instituting Proceedings (the "Order") requiring funds not claimed from a Fair Fund by harmed investors be deposited in the U.S. Treasury instead of returned to BitClave (the "Leftover Funds Provision").[1] The Leftover Funds Provision is unenforceable under (i) the explicit language of 15 U.S.C. § 78u(d)(5); and (ii) *Liu v. SEC*, 591 U.S. 71 (2020)—which was decided only weeks after the Order was entered—along with subsequent lower court cases interpreting the *Liu* decision. The Division of Enforcement's Response Brief relies primarily on the SEC's "strong interest in maintaining the finality of settlements," *see* Resp. Br. at 9, citing *Certain Off-Channel Communications Settled Orders*, Release No. 102860, 2025 WL 1101495, at *1 (Apr. 14, 2025), and ignores and exceeds the plain text of the authority granted by Congress. The interest in

[1] In its April 10, 2025, Order Requesting Additional Briefing, the SEC noted it had not yet determined whether BitClave's filing constitutes a motion for reconsideration under Rule 470 or, in the SEC's own language, a "motion to modify a settled order."

BitClave's March 18, 2025 filing is a Motion for Relief from the Settled Order pursuant to Rule 154 of the SEC's Rules of Practice, not a motion for reconsideration under Rule 470. BitClave does not argue that the SEC erred when it issued the Settled Order in May 2020. Rather, it contends that subsequent legal and policy developments—namely, the Supreme Court's ruling in *Liu* and the SEC's acknowledged shift away from its misguided regulation-by-enforcement approach—render continued enforcement of the Leftover Funds. BitClave seeks prospective relief tailored to these changed circumstances under Rule 154, not a retrospective revaluation of the original order. Granting relief under Rule 154 is not only procedurally appropriate but also necessary to align the Order with current law and policy, ensuring fairness and adherence to equitable principles.

"finality," however, cannot override the Supreme Court's mandate in *Liu,* which requires equitable remedies to be tailored with their remedial purpose and commands that disgorgement must be "awarded for victims." *Liu*, 591 U.S. at 75.

The Leftover Funds Provision is unenforceable under the plain text of 15 U.S.C. § 78u(d)(5). BitClave does not dispute that a showing of "compelling circumstances" is needed to justify relief from a Settled Order. *See* Resp. Br. at 9, citing *Certain Off-Channel Commc'ns*, 2025 WL 110495, at *2. BitClave submits this Reply Brief to clarify that there are two obvious such "compelling circumstances" in this case. First, the evolution in caselaw announced by *Liu* and subsequent cases such as *SEC v. Govil*¸ 86 F.4th 89 (2d Cir. 2023) makes clear that enforcement of the Leftover Funds Provision exceeds the SEC's powers under the plain text of the statute. And second, the SEC's recent policy shift regarding the digital asset industry after years of over-enforcement and arbitrary and capricious conduct makes clear that enforcement of the Leftover Funds Provision would be detrimental to the public interest.

The Division of Enforcement also claims that BitClave's motion for relief from the Order is premature, but this assertion is incorrect. *See* Resp. Br. at 17. The deadline for harmed investors to submit claims to the Fair Fund has expired, and BitClave's motion does not seek to interrupt the calculation or distribution of any pending claims.

II. ARGUMENT

A. The SEC's Enforcement of the Leftover Funds Provision Exceeds the Authority Granted by 15 U.S.C. § 78u(d)(5)

The Securities and Exchange Commission's enforcement of the Leftover Funds Provision in the May 25, 2020 Order, which directs unclaimed Fair Fund amounts to the U.S. Treasury rather than returning them to BitClave, exceeds the authority granted by Congress under 15 U.S.C. § 78u(d)(5). The precise text of this statute limits the SEC's equitable relief to remedies that directly

benefit harmed investors, rendering the diversion of funds to the Treasury both unauthorized and contrary to the statute's language and clear intent. BitClave respectfully submits that this overreach violates the statutory boundaries of the SEC's remedial powers and warrants relief from the Order.

1. The Plain Text of 15 U.S.C. § 78u(d)(5) Limits Relief to Harmed Investors

The relevant statutory provision, 15 U.S.C. § 78u(d)(5), states:

> In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary **for the benefit of investors**. (Emphasis added.)

This language is unambiguous: the SEC's authority to pursue equitable relief is expressly confined to remedies that are "appropriate or necessary **for the benefit of investors**." The statute does not contemplate, nor does it authorize, the redirection of disgorged funds to any entity other than harmed investors, such as the U.S. Treasury.

The Leftover Funds Provision, which mandates that unclaimed Fair Fund amounts be transferred to the Treasury, directly contravenes this statutory mandate. By diverting funds to a government entity that is not an investor—let alone a harmed investor—the SEC's action falls outside the scope of 15 U.S.C. § 78u(d)(5). The Treasury cannot be construed as an "investor" under any reasonable interpretation of the statute, and the provision's enforcement thus represents an *ultra vires* act that exceeds the SEC's Congressionally delegated authority.

2. The Supreme Court's Interpretation in *Liu* Reinforces the Statutory Limitation

The Supreme Court's decision in *Liu v. SEC* reemphasized the strict boundaries of the SEC's equitable authority under 15 U.S.C. § 78u(d)(5). In *Liu*, the Supreme Court held that disgorgement, as an equitable remedy, must be "awarded for victims" and "must mean something more than depriving a wrongdoer of net profits alone." 591 U.S. at 75, 89. The Court emphasized

that disgorgement must adhere to traditional equitable principles and that any disgorgement must go "to wronged investors for their benefit," which precludes the SEC from redirecting funds to entities other than those directly harmed by the violation. *Id.* at 88. The *Liu* decision, issued mere weeks after BitClave's 2020 Order, clarified that any disgorgement not distributed to harmed investors exceeds the SEC's statutory authority under 15 U.S.C. § 78u(d)(5), and specifically criticized the practice of disgorged funds being sent to the Treasury. *Id.* at 85, 87–89.

The Leftover Funds Provision violates this principle by diverting unclaimed funds to the U.S. Treasury, an entity that has suffered no harm and holds no status as an investor. A thorough claims process, as provided for in the Order, has already been completed and has identified harmed investors. As the Fair Fund process has concluded, with $4,614,679.81 already distributed to harmed investors who submitted timely claims, any remaining funds are not tied to verifiable pecuniary losses. The speculative existence of additional "harmed investors" cannot justify diverting these funds to the Treasury, as such an action fails to meet the statutory requirement that equitable relief be "for the benefit of investors." *See SEC v. Ripple Labs, Inc.*, No. 20 Civ. 10832, 2024 WL 3730403, at *5–6 (S.D.N.Y. Aug. 7, 2024) (rejecting disgorgement based on speculative harm).

B. The Transformative Shift in Disgorgement Law Under *Liu* Constitutes a "Compelling Circumstance" Demanding Relief.

The SEC acknowledges that "compelling circumstances" are required to justify relief from a Settled Order, as noted in *Certain Off-Channel Communications*, 2025 WL 110495, at *2. Two such "compelling circumstances" exist that support granting BitClave's relief from the Leftover Funds Provision of the May 25, 2020 Order. First, *Liu* and its progeny represent a change in law that renders the Leftover Funds provision unenforceable. Second, continued enforcement defies public policy, as it perpetuates the inequities of the SEC's now-disavowed regulation-by-

enforcement approach to the digital asset industry, contravening the agency's recent policy shift towards fairer regulation.

1. The Development of Disgorgement Caselaw Articulated in *Liu* Constitutes a "Compelling Circumstance" Warranting Relief.

As the Commission has recently confirmed, "a significant change in law" qualifies as a compelling circumstance justifying relief from a Settled Order. *Certain Off-Channel Commc'ns*, 2025 WL 1101495, at *2. The constraints on the SEC's disgorgement authority established by *Liu* and subsequent cases like *Govil* represent precisely the type of "significant change in law" that warrant relief for Respondent BitClave.

Liu's central holding is that disgorgement must be "awarded for victims" in order to align with the SEC's remedial powers. *Liu*, 591 U.S. at 72. Lower courts have interpreted *Liu* as a mandate that "disgorgement [. . .] must comport with traditional equitable limitations." *SEC v. Ahmed*, 72 F.4th 379, 396 (2d Cir. 2023). These equitable principles dictate that disgorged funds *must* go to harmed investors, and that "[f]unds cannot be returned if there was no deprivation in the first place." *Govil*, 86 F.4th at 103. *Liu* was not merely a clarification—it was a change in law as to when and under what circumstances the SEC may award disgorgement. Lower courts have rightfully interpreted *Liu* to hold that disgorgement may *only* be awarded to "victims" of a violation who have suffered an actual, specified "pecuniary harm." *Govil*, 86 F.4th at 94.[2]

BitClave has fulfilled its disgorgement obligation by distributing $4,614,679.81 to verifiable harmed investors through the Fair Fund process. All eligible investors received ample

[2] While the SEC cites to a First Circuit decision in which they disagree with the Second Circuit's holding in *Govil* (*see* Resp. Br. at 13 (citing *SEC v. Navellier & Assocs., Inc.*, 108 F.4th 19, 41 (1st Cir. 2024))), BitClave submits that the First Circuit's decision in *Navellier* runs afoul of *Liu* and should not be relied upon here. In any event, *Navellier* supports the proposition that disgorged funds may not be sent to the U.S. Treasury by confirming that such funds must "remedy a direct harm" to victims rather than "simply benefit the public at large." *Navellier*, 108 F.4th at 41 n.14.

notice and the opportunity to submit claims. The existence of any additional "victims" with unclaimed "pecuniary harm" is speculative and insufficient to justify further disgorgement. *See, e.g.*, *Ripple Labs*, 2024 WL 3730403 at *5–6. Consequently, the Leftover Funds Provision is expressly unenforceable under *Liu* and its progeny.

Under *Liu*, disgorgement is satisfied when a respondent like BitClave returns funds to the wronged parties. *Govil*, 86 F.4th at 94. BitClave has met this obligation—to make payments to all such wronged parties—through the Fair Fund process. The U.S. Treasury is not a "wronged party," and thus under *Liu* and its progeny, cannot be a recipient of funds as required in the Leftover Funds Provision. *Liu* is exactly the type of "significant change in law," *Certain Off-Channel Commc'ns*, 2025 WL 110495, at *2, that qualifies as a "compelling circumstance" justifying relief from the Order.

The SEC attempts to rectify the award of disgorgement here with the clear holding in *Liu* by pointing to language in the Plan of Distribution that states that funds would be returned to the Treasury if "infeasible to distribute to investors." Resp. Br. at 6, 11–13. This *post hoc* attempt at retroactively making the Order comport with *Liu* relies on the Court's leaving open the question of whether sending disgorged funds to the Treasury comports with traditional equitable principles and the language of 15 U.S.C. § 78u(d)(5) where it is "infeasible." *Liu*, 591 U.S. at 89 ("The Government additionally suggests that the SEC's practice of depositing disgorgement funds with the Treasury may be justified where it is infeasible to distribute the collected funds to investors. It is an open question whether, and to what extent, that practice nevertheless satisfies the SEC's obligation to award relief 'for the benefit of investors' and is consistent with the limitations of § 78u(d)(5).") (internal citations omitted).

However, the very fact that the Fair Fund exists and successfully distributed more than $4 million to investors confirms that this is *not* a case where it is infeasible to identify harmed investors. The SEC cannot establish such a scenario by fiat and has provided no evidence to explain why it would be infeasible to identify harmed investors (nor could it, because all such potential harmed investors have already been identified and made whole).

Moreover, the SEC's proposed justification in the Plan of Distribution for sending funds to the Treasury is that "[r]eturning such money to Respondent would be inconsistent with the equitable principle that no [p]erson should profit from their own wrongdoing." Resp. Br. at 6 (citing Plan of Distribution at 15–16). However, this justification was the exact one squarely rejected by the Supreme Court in *Liu*. ("[T]he SEC's equitable, profits-based remedy must do more than simply benefit the public at large by virtue of depriving a wrongdoer of ill-gotten gains. To hold otherwise would render meaningless the latter part of § 78u(d)(5)."). *Liu*, 591 U.S. at 89. The SEC continues to rely on older case law pre-dating *Liu* in its Response Brief for the incorrect proposition that disgorgement may be aimed at simply depriving a wrongdoer of profits rather than aimed at compensating victims. *See, e.g.*, Resp. Br. at 12 (citing *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328, 341–42 (2017) and arguing contrary to *Liu* that "the availability of disgorgement therefore turns on whether the violator has made a profit, not on whether the victim suffered a loss.").

2. The Commission's Recent Policy Shift Regarding the Digital Asset Industry Constitutes a Compelling Circumstance Justifying Relief.

The Commission has also recently clarified that compelling circumstances warranting relief exist "when enforcement of the decree without modification would be detrimental to the public interest." *Certain Off-Channel Commc'ns*, 2025 WL 1101495, at *2. Here, enforcing the

Order against BitClave, given the SEC's historical approach to the digital assets industry and its recent policy shift, would be detrimental to the public interest.

The SEC's recent regulatory shift is significant and compelling. As discussed extensively in BitClave's Motion, the SEC has markedly shifted its policy towards regulating the digital asset industry, acknowledging the harm caused by the prior regulation-by-enforcement regime. This earlier approach "created an unpredictable, volatile environment fraught with risk and uncertainty for market participants" such as BitClave. Aman Saggu *et al.*, *Uncertain Regulations, Definite Impacts: The Impact of the U.S. Securities and Exchange Commission's Regulatory Interventions on Crypto Assets*, 72 FIN. RSCH. LETTERS 106413 (2024), https://www.sec.gov/files/ctf-input-arte-2025-02-19.pdf (2025). The SEC's current leadership has acknowledged the shortcomings of this approach and is actively taking steps to establish a clearer regulatory framework by dismissing arbitrary enforcement actions and initiating uniform rulemaking. *See*, *e.g.*, *SEC Agrees to Drop Enforcement Suit Against Cumberland DRW, Firm Says*, COINDESK (Mar. 4, 2025), https://coindesk.com/policy/2025/03/04/sec-agrees-to-drop-enforcement-suit-against-cumberland-drw-firm-says (discussing SEC's decision to drop arbitrary enforcement action against crypto firm); Stephen Katte, *SEC to shape crypto policy with 'notice and comment,' says Atkin*, COINTELEGRAPH (June 4, 2025), https://cointelegraph.com/news/sec-policymaking-notice-and-comment-chair-paul-atkins (describing Chairman Atkins's testimony to a Senate subcommittee regarding forthcoming rulemaking in the digital asset space); Chairman Paul S. Atkins, *Keynote Address at the Crypto Task Force Roundtable on Tokenization* (May 12, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-crypto-roundtable-tokenization-051225-keynote-address-crypto-task-force-roundtable-tokenization (keynote speech by Chairman Atkins announcing the SEC's intent to adopt comprehensive digital asset

regulations). This significant policy shift is exactly the type of "compelling circumstance" that justifies relief from or modification of an existing settled order.

Moreover, as noted in *Certain Off-Channel Communications,* modifying a settled order is warranted "when enforcement of the decree without modification would be detrimental to the public interest." 2025 WL 1101495 at *2. Both federal courts and the SEC itself have acknowledged a "public interest" in remedying the adverse effects of the SEC's overly aggressive regulation-by-enforcement approach towards early-stage digital assets companies like BitClave. *See*, *e.g.*, *Grayscale Invs., LLC v. SEC*, 82 F.4th 1239, 1242 (D.C. Cir. 2023) (finding the SEC's denial of a petition to list a bitcoin futures fund on a national exchange to be arbitrary and capricious); *Coinbase, Inc. v. SEC*, 126 F.4th 175, 181–82 (3d Cir. 2025) (finding that the SEC's denial of a rulemaking petition by Coinbase was arbitrary and capricious); Crypto Task Force, SEC.GOV, https://sec.gov/about/crypto-task-force (last visited July 9, 2025).

Indeed, Commissioner Pierce, dissenting in *Certain Off-Channel Communications*, emphasized that "[w]hen the Commission engages in enforcement sweeps that ensnare large numbers of firms across different parts of its regulatory ambit, it should endeavor to ensure both that the remedies it selects are commensurate to the conduct and that it imposes those remedies in a fair and evenhanded manner across firms." 2025 WL 1101495, at *8 (Pierce, H., dissenting). The SEC's prior regulation-by-enforcement approach to the digital assets industry exemplified such an "enforcement sweep." To address the resulting inequities, the SEC should acknowledge its policy shift as a "compelling circumstance" and grant BitClave relief from the Leftover Funds Provision of the Order.

C. The Division of Enforcement Relies on Inapplicable Precedent.

The Division of Enforcement's opposition hinges on a misapplication of recent SEC precedent, particularly its reliance on *Certain Off-Channel Communications Settled Orders*,

Release No. 102860, 2025 WL 1101495 (Apr. 14, 2025). This precedent is inapposite, as BitClave's circumstances fundamentally differ from those of the respondents in *Certain Off-Channel Communications*, who sought relief solely *because* later respondents secured more lenient terms due to differing risk tolerances or strategic choices. BitClave's claim for relief is far more robust, grounded in a significant change in law and compelling equitable considerations.

BitClave acknowledges that other digital asset companies, such as *BlockFi Lending LLC*, (Exchange Act Release No. 11029, 2022 WL 462445 (Feb. 14, 2022)); *Nexo Capital Inc*., (Exchange Act Release No. 11149, 2023 WL 345200 (Jan. 19, 2023)); and *TradeStation Crypto, Inc.,* (Exchange Act Release No. 11269, 2024 WL 473703 (Feb. 7, 2024)), received more favorable settlement terms. However, these outcomes were not driven by mere strategic differences, as in *Certain Off-Channel Communications*. Rather, they reflect the seismic shift in disgorgement law articulated in *Liu v. SEC*, 591 U.S. 71, which invalidated the Leftover Funds Provision by mandating that disgorgement be awarded solely to victims with proven pecuniary harm. This legal evolution, discussed above, directly underpins the more lenient treatments and distinguishes BitClave's case from the Division's cited precedent.

Similarly, the Division's reliance on *Gregory T. Bolan Jr.*, Release No. 85971, 2019 WL 2324336 (May 30, 2019), is misplaced. In *Bolan*, the respondent sought relief because a co-conspirator, who opted for a hearing rather than settling, secured a dismissal based on an evidentiary ruling. BitClave's situation bears no resemblance to Bolan's, as its argument does not hinge on the litigation strategies of co-conspirators. Instead, BitClave's claim rests on the fact that subsequent digital asset companies benefited from settlements shaped by *Liu's* limits on disgorgement authority—an intervening change in law unavailable to BitClave at the time of its 2020 settlement.

The Division itself concedes that settled orders should be upheld only "whenever equitable and policy considerations so permit." *Bolan*, 2019 WL 2324336, at *3. Here, those considerations decisively favor BitClave. The Leftover Funds Provision, rendered unenforceable by *Liu* mere weeks after BitClave's settlement, compels disgorgement to the U.S. Treasury—an entity not recognized as a "victim" under *Liu*. Moreover, the Leftover Funds Provision stems from the SEC's now-disavowed regulation-by-enforcement campaign against the digital asset industry, which the SEC's recent policy shift acknowledges as misguided. Enforcing the Leftover Funds Provision would perpetuate an inequitable outcome, punishing BitClave for a regulatory approach the SEC itself has abandoned. Equity and public policy demand relief, as upholding the Leftover Funds Provision would contravene both *Liu*'s legal mandate and the SEC's own commitment to fairer regulation of digital assets.

D. BitClave's Motion is Timely and Ripe for Adjudication.

The Division of Enforcement's claim that BitClave's motion for relief is premature is baseless and ignores the procedural realities of this case. *See* Resp. Br. at 17. The deadline for harmed investors to submit claims through the Fair Fund process, established in the SEC's Plan of Distribution on February 9, 2023, has long expired. *See BitClave PTE, Ltd.*, Exchange Act Release No. 96869, 2023 WL 1926520 (Feb. 9, 2023). This Plan, finalized through a robust notice-and-comment process, set clear and unambiguous deadlines for claim submissions. The Division of Enforcement has not alleged—nor could it credibly claim—that the Fund Administrator's notice to investors was deficient in any way. Consequently, the notion of unidentified "harmed investors" who might still submit claims is purely speculative and lacks any evidentiary basis. Courts have consistently rejected such conjecture as insufficient to justify disgorgement beyond verifiable pecuniary harm. *See Ripple Labs*, 2024 WL 3730403, at *5–6. To permit the SEC to indefinitely retain the disgorged funds on the speculative possibility of identifying additional harmed investors

would be unjust and run counter to the Supreme Court's holding in *Liu*. *Liu*, 591 U.S. at 88 ("The equitable nature of the profits remedy generally requires the SEC to return a defendant's gains to wronged investors for their benefit. After all, the Government has pointed to no analogous common-law remedy permitting a wrongdoer's profits to be withheld from a victim indefinitely without being disbursed to known victims.").

In any event, BitClave's motion does not seek to disrupt the processing of timely submitted claims or halt distributions to eligible investors who have already submitted such claims. Rather, it asserts a straightforward and compelling position: under *Liu* disgorgement funds may only be distributed to harmed investors to remedy proven pecuniary losses. If there are in fact additional identified investors entitled to funds under the terms of the Proposed Plan of Distribution, the Commission still can grant relief to BitClave by clarifying that any surplus funds remaining after the Fair Fund distribution—funds not tied to verified investor harm—cannot lawfully be diverted to the U.S. Treasury and must instead be returned to BitClave. The expiration of the claims' deadline and the clarity of *Liu*'s mandate render BitClave's motion not only timely but urgent, as further enforcement of the Leftover Funds Provision would violate established law and perpetuate an unjust outcome.[3]

III. CONCLUSION

For the reasons articulated above, Respondent BitClave respectfully urges the SEC to grant relief from the May 25, 2020, Order and direct the return of any remaining disgorged funds not distributed to harmed investors who submitted timely claims through the Fair Funds process.

[3] Moreover, it is inconsistent of the SEC to argue on the one hand that BitClave's failure to object to the Proposed Plan of Distribution at the time it was brought is a reason to deny the Motion (*see* Resp. Br. at 8, 13) while at the same time arguing that the Motion is premature.

Dated: July 10, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Reply Brief contains 3,448 words, exclusive of the Table of Contents and Table of Authorities, and complies with the type-volume limit of 17 C.F.R. § 201.154(c) and the typeface and formatting requirements of § 201.152(b).

DATED: July 10, 2025

/s/ Keith W. Miller
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CERTIFICATE OF SERVICE

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

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