UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

COMMODITIES FUTURES TRADING COMMISSION, Plaintiff, v. MY BIG COIN PAY, INC.; MY BIG COIN, INC.; RANDALL CRATER; MARK GILLESPIE; JOHN ROCHE; and MICHAEL KRUGER, Defendants, KIMBERLY RENEE BENGE; KIMBERLY RENEE BENGE d/b/a GREYSHORE ADVERTISEMENT a/k/a GREYSHORE ADVERTISET; BARBARA CRATER MEEKS; ERICA CRATER; GREYSHORE, LLC; and GREYSHORE TECHNOLOGY, LLC, Relief Defendants.	Civil Action 1:18-cv-10077-RZW

UNOPPOSED MOTION OF THE UNITED STATES FOR LEAVE TO INTERVENE AND FOR A STAY OF DISCOVERY AND MEMORANDUM IN SUPPORT

The Department of Justice, through the United States Attorney's Office for the District of Massachusetts and the Criminal Division, Fraud Section ("government") respectfully moves to intervene in this action for the limited purpose of moving for a stay of discovery pending resolution of a federal criminal case based on the same alleged misconduct. Plaintiff Commodities Futures Trading Commission ("CFTC"), Defendants Randall Crater, Mark Gillespie, John Roche, and Michael Kruger, and Relief Defendants Kimberly Renee Benge and Barbara Meeks assent to the government's motion to intervene, and to the government's motion for a stay of discovery.

Introduction

On January 16, 2018, the CFTC initiated this civil action (the "CFTC Action") against Defendants My Big Coin Pay, Inc., Randall Crater, and Mark Gillespie, and Relief Defendants Kimberly Renee Benge, Kimberly Renee Benge d/b/a Greyshore Advertisement a/k/a Greyshore Advertiset, Barbara Crater Meeks, Erica Crater, Greyshore, LLC, Greyshore Technology, LLC. On April 20, 2018, the CFTC filed an amended complaint, naming John Roche and Michael Kruger as additional defendants.

On February 26, 2019, a grand jury sitting in the District of Massachusetts returned a seven-count Indictment charging Crater, with wire fraud and unlawful monetary transactions. See United States v. Randall Crate*r*, 1:19-cr-10063, D. Mass (the "Criminal Action"). The Criminal Action and the CFTC Action are founded on the same operative facts. Accordingly, a stay of discovery in the CFTC Action is justified for several reasons. First, a stay of discovery would not unduly prejudice the Defendants. To the contrary, a stay would allow the Defendants — particularly Crater, the alleged ringleader of the scheme — to conserve resources by litigating only one matter at a time. Second, a stay of discovery would create genuine efficiencies. Any resolution of the Criminal Action—which is premised on the same nexus of facts as the CFTC Action—will dramatically impact the result here. For example, a conviction in the Criminal Action could have an estoppel effect in the CFTC Action. See, e.g., Emich Motors Corp. v. Gen. Motors Corp., 340 U.S. 558, 568 (1951) ("It is well established that a prior criminal conviction may work an estoppel in favor of the government in a subsequent civil proceeding."). At a minimum, resolving the Criminal Action will greatly simplify the issues to be resolved here.[1] For all these reasons, a stay

[1] See, e.g., In re Grand Jury Proceedings (Williams) v. United States, 995 F.2d 1013, 1018 n.11 (11th Cir. 1993) ("Although stays delay civil proceedings, they may prove useful as the criminal process may determine and narrow the remaining civil issues."); Texaco, Inc. v. Borda, 383 F.2d 607, 609 (3d Cir. 1967) (affirming stay of civil action where "trial of the criminal case

of discovery is in the public interest, will not unduly prejudice the parties, and will promote the efficient use of judicial and litigant resources.

Background

As set forth in the Indictment, Crater is charged with engaging in a scheme to defraud investors by soliciting investments in a proprietary virtual currency called "My Big Coins" or "Coins." Between 2014 and 2017, Crater and his affiliates persuaded investors to purchase or invest in Coins by making numerous misrepresentations about Coins. Among other things, Crater and his affiliates falsely claimed that Coins were a functioning virtual currency with value, were backed by gold, and could be traded on exchanges. In reality, the Indictment alleges, Coins were not backed by gold or other assets, were not readily exchangeable virtual currency, and had little to no actual value. Over the course of the scheme, Crater misappropriated over $6 million in investor funds. Crater was indicted on February 26, 2019.

The CFTC filed the instant litigation on January 16, 2018, based on the same conduct described above, and named Crater and several of Crater's family members and affiliates as defendants and relief defendants. The CFTC filed an Amended Complaint in April 2018. Since that time, Defendants John Roche, Michael Kruger, and Mark Gillespie have indicated that they have not retained counsel and have not filed any responsive pleadings. Defendants Roche and Gillespie have both defaulted, and Defendants Roche, Kruger, and Gillespie have neither served nor substantively responded to any discovery requests from the CFTC. The CFTC and the remaining Defendants (including Randall Crater and Relief Defendant Kimberly Benge) have served written discovery; however the parties have not yet completed responses to these requests.

[might] reduce the scope of discovery in the civil action" and "simplify the issues"); Brock v. Tolkow, 109 F.R.D. 116, 120 (E.D.N.Y. 1985) ("[R]esolution of the criminal case might reduce the scope of discovery in the civil case or otherwise simplify the issues.").

In addition, with the exception of one limited deposition of a CFTC investigator, no depositions have taken place or been scheduled.

Argument

I. THE COURT SHOULD ALLOW THE GOVERNMENT TO INTERVENE FOR THE LIMITED PURPOSE OF SEEKING A STAY OF DISCOVERY

Pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure, anyone may intervene when the applicant "claims an interest relating to the property or transaction which is the subject of the action" and the applicant is so situated that "disposing of the action may as a practical matter impair or impede the [applicant's] ability to protect [that] interest . . . ." See also Int'l Paper Co. v. Inhabitants of Jay, Maine, 887 F.2d 338, 342 (1st Cir. 1989). "Thus, a party seeking intervention of right under Rule 24(a)(2) must demonstrate three things: 1) that it has a direct and substantial interest in the subject matter of the litigation; 2) that its ability to protect the interest may be impaired if it is not allowed to intervene; and 3) that its interest will not be adequately represented by an existing party. " Id.

The government has a direct and substantial interest in the subject matter of the CFTC Action, which involves the same scheme as the Criminal Action. Courts regularly recognize that federal prosecutors have a substantial interest in intervening in civil actions to protect the interests of the United States in securing convictions in criminal cases. See, e.g., S.E.C. v. TelexFree, Inc., 52 F. Supp. 3d 349, 352 (D. Mass. 2014); S.E.C. v. Chestman, 861 F.2d 49, 50 (2d Cir. 1988) (denying appeal of district court order allowing intervention and staying SEC enforcement action). Specifically, the government has a "discernible interest in intervening in order to prevent discovery in [a] civil case from being used to circumvent the more limited scope of discovery in the criminal matter." Chestman, 861 F.2d at 50. Without intervention the government cannot protect its

interests because it cannot weigh in on whether civil discovery should proceed. Nor can any of the current parties to the CFTC Action adequately represent the government's interests.

The Court can also permit intervention when an applicant's claim or defense and the main action have a question of law or fact in common. Fed. R. Civ. P. 24(b)(1)(B); see also S.E.C. v. Downe, 1993 WL 22126, at *11 (S.D.N.Y. 1993) ("It is well-established that the United States Attorney may intervene in a federal civil action to seek a stay of discovery when there is a parallel criminal proceeding, which is anticipated or already underway, that involves common questions of law or fact."). To intervene under this section, the government must establish that there is a common question, an independent ground for jurisdiction, and a timely motion. If these conditions are met, the district court has the discretion to allow intervention, and should consider whether intervention will unduly delay or prejudice adjudicating the civil case and whether the interests of the intervener are already adequately represented by the existing parties. See Fed. R. Civ. P. 24(b); see also, e.g., In re Acushnet River & New Bedford Harbor Proceedings re Alleged PCB Pollution, 712 F. Supp. 1019, 1023 (D. Mass. 1989) (discussing standard); Bureerong v. Uvawas, 167 F.R.D. 83, 85-86 (C.D. Cal. 1996) (permitting government to intervene under Rule 24(b) and staying civil discovery pending resolution of criminal case). Here, the facts at issue in the two matters are largely the same, the government's motion is timely insofar as it is being submitted shorty after filing the Criminal Action. This request is also appropriate given the status of the CFTC Action—written discovery is nearly complete and, but for one exception (Patricia Gomersall, a CFTC investigator), depositions have not taken place (or even been scheduled). Moreover, this Court has already resolved the dispositive legal motions in the CFTC Action, meaning the CFTC Action will proceed to the next stage in litigation. Finally, the parties have assented to the government's intervention for the limited purpose of seeking a stay of discovery.

Because the operative facts of the two cases are the same, and because civil discovery may, as a practical matter, impair the government's ability to protect its interests in the enforcement of federal criminal law, the government respectfully seeks leave to intervene for the purpose of arguing for a stay of discovery.

II. THE COURT SHOULD STAY DISCOVERY TO PROTECT THE INTEGRITY OF THE PENDING CRIMINAL CASE

"It is apodictic" that federal courts have the inherent power to stay civil proceedings in deference to criminal matters. Microfinancial, Inc. v. Premier Holidays Intl., Inc., 385 F.3d 72, 77 (1st Cir. 2004). Courts generally consider certain factors when deciding whether to stay a civil case pending resolution of a criminal case, including (a) the extent to which the civil and criminal cases overlap; (b) the public interest; (c) any potential prejudice to the civil parties if that matter is stayed; (d) the court's interest in managing dockets and resources; and (e) the current status of the criminal case.[2] In Microfinancial, the district court denied defendants' motion to stay a civil trial because of a rumored grand jury investigation, the First Circuit articulated the relevant factors similarly, though some were specific to the facts of that case: whether delay would prejudice the civil litigants; potential prejudice to the party that is the defendant in both the civil and criminal matters; impact on judicial resources; interests of any third parties; the public interest; the status of the two matters; and whether the litigants are acting in good faith. See 385 F.3d at 78. Here, *all* of the relevant factors favor the stay the government seeks: the facts, evidence and witnesses in the two cases overlap almost entirely; the public interest favors protecting the integrity of the

[2] See, e.g., Keating v. Office of Thrift Supervision, 45 F.3d 322, 324–25 (9th Cir. 1995); TelexFree, Inc., 52 F. Supp. 3d at 352; Chao v. Fleming, 498 F. Supp. 2d 1034, 1039-40 (W.D. Mich. 2007); In re Adelphia Comm. Secs. Litig., 2003 WL 22358819, *6-7 (E.D. Pa. 2003); S.E.C. v. HealthSouth Corp., 261 F. Supp. 2d 1298, 1326 (N.D. Ala. 2003); Javier H. v. Garcia-Botello, 218 F.R.D. 72, 74 (W.D.N.Y. 2003); Walsh Sec., Inc. v. Cristo Prop. Mgt., Ltd., 7 F. Supp. 2d 523, 526-27 (D.N.J. 1998).

criminal proceedings; there is minimal, if any, potential prejudice to the civil parties from staying discovery; a stay would conserve judicial resources; and the Criminal Action is now pending.

III. A STAY OF DISCOVERY IS APPROPRIATE BECAUSE OF THE NEAR TOTAL OVERLAP OF FACTS AND EVIDENCE

"[T]he most important factor [in ruling on a motion to stay civil proceedings because of a pending criminal case] is the degree to which the civil issues overlap with the criminal issues." S.E.C. v. Nicholas, 569 F. Supp. 2d 1065, 1070 (C.D. Cal. 2008) (allowing DOJ intervention and staying SEC action pending resolution of criminal case) (citations omitted); see also, e.g., Walsh Secs., Inc. v. Cristo Prop. Mgmt., Ltd., 7 F. Supp. 2d 523, 527 (D.N.J. 1998) (same); In re Adelphia Comm. Secs. Litig., 2003 WL 22358819, *6-7 (E.D. Pa. 2003) (same; citing risk of inconsistent judgments in civil and criminal proceedings with overlapping facts). As noted above, the two actions here are substantively identical: both are predicated on the allegation that Crater and his affiliates orchestrated a scheme to defraud investors by using misrepresentations to persuade investors and potential investors to purchase Coins. Accordingly, the two cases will necessarily rely on the same key witnesses and documentary and other evidence.

IV. THE PUBLIC INTEREST WEIGHS IN FAVOR OF UNIMPEDED RESOLUTION OF THE CRIMINAL CASE

"[T]he public's interest in the effective enforcement of the criminal law is the paramount public concern. Although the public certainly has an interest in the preservation of the integrity of competitive markets, the pending criminal prosecution serves to advance those same interests." S.E.C. v. Shkreli, No. 15-CV-7175-KAM, 2016 WL 1122029, at *7 (E.D.N.Y. 2016) (citation and internal quotation marks omitted); see also S.E.C. v. Abdallah, 313 F.R.D. 59, 64 (N.D. Ohio 2016) ("[T]he public interest in effective criminal prosecution generally outweighs any existing civil interests."). Indeed, for at least 50 years courts have recognized that priority should be given to the "public interest in law enforcement." See, e.g., Campbell v. Eastland, 307 F.2d 478, 487 (5th

Cir. 1962) ("Administrative policy gives priority to the public interest in law enforcement. This seems so necessary and wise that a trial judge should give substantial weight to it in balancing the policy against the right of a civil litigant to a reasonably prompt determination of his civil claims or liabilities."); In re Ivan F. Boesky Secs. Litig., 128 F.R.D. 47, 49 (S.D.N.Y. 1989) ("[T]he public interest in the criminal case is entitled to precedence over the civil litigant") (italics omitted).

Moreover, dozens of courts have recognized that the interests of justice weigh in favor of staying parallel civil proceedings because of the various ways those proceedings can impede a parallel criminal case. "Where both civil and criminal proceedings arise out of the same or related transactions the government is ordinarily entitled to a stay of *all discovery* in the civil case until disposition of the criminal matter." United States v. One 1964 Cadillac Coupe DeVille, 41 F.R.D. 352, 353 (S.D.N.Y. 1966) (emphasis added). See also, e.g., TelexFree, Inc., 52 F. Supp. 3d at 352 (granting intervention and stay of SEC action); S.E.C. v. Purchasers of Secs. In Global Industr., Inc., 2012 WL 5505738, *3-6 (S.D.N.Y. Nov. 9, 2012) (same); S.E.C. v. Gordon, 2009 WL 2252119, *3-6 (N.D. Okl. July 28, 2009) (same); Nicholas, 569 F. Supp. 2d at 1070 (same); S.E.C. v. Beacon Hill Asset Management LLC, 2003 WL 554618, at *1 (S.D.N.Y. Feb. 27, 2003) (same); In re Worldcom, Inc., Sec. Litig., 2002 WL 31729501, *3-10 (S.D.N.Y. Dec. 5, 2002) (same); Downe, 1993 WL 22126, at *12-14 (same). As courts have noted, a substantial overlap of facts and evidence makes the public's interest in a stay even stronger.

"[T]he principal concern with respect to prejudicing the government's criminal investigation is that its targets might abuse civil discovery to circumvent limitations on discovery in criminal cases." Beacon Hill Asset Management LLC, 2003 WL 554618 at *1. In the ordinary course, a criminal prosecution operates under a specific set of discovery and procedural rules honed over decades to balance state and personal interests, and "designed to protect the integrity

and truth-seeking function of the criminal process." Nicholas, 569 F. Supp. 2d at 1072. That balance would be upended here if Crater is allowed to abuse civil discovery to circumvent the criminal rules. See, e.g., Campbell, 307 F.2d at 487 ("A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal suit."); United States v. Phillips, 580 F. Supp. 517, 520 (N.D. Ill. 1984) ("Protection of the integrity of the criminal justice process fully justifies this Court's taking remedial action."). As one court has articulated it,

> It is well established that a litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit to avoid the restrictions on criminal discovery and, thereby, obtain documents [and testimony] he might otherwise not be entitled to for use in his criminal suit.

Founding Church of Scientology v. Kelley, 77 F.R.D. 378, 380 (D.D.C. 1977) (citations omitted).[3]

A quick survey of criminal discovery procedures shows how parallel civil discovery can effectively nullify the criminal rules. For example, the criminal discovery rules do not allow pre-trial depositions in the ordinary course.[4] Similarly, the Jencks Act provides that, in criminal cases,

[3] See also, e.g., United States v. Mellon Bank, N. A., 545 F.2d 869, 872-73 (3d Cir. 1976) (affirming stay; noting that "the similarity of the issues [in the civil and criminal matters] left open the possibility that [the target] might improperly exploit civil discovery for the advancement of his criminal case"); In re Eisenberg, 654 F.2d 1107, 1113-14 (5th Cir. 1981) (observing that allowing civil discovery to proceed would make litigant "the beneficiary of materials otherwise unavailable under the criminal rules . . . thus nullifying in effect the criminal discovery limitations"); Ashworth v. Albers Medical, Inc., 229 F.R.D. 527, 532-33 (S.D. W. Va. 2005) (United States had discernable interest in intervening to prevent civil discovery from being used to circumvent scope of discovery in criminal matter); Founding Church of Scientology, 77 F.R.D. at 380-81 (blocking interrogatories in favor of ongoing grand jury investigation); S.E.C. v. Control Metals Corp., 57 F.R.D. 56, 57-58 (S.D.N.Y. 1972) (staying depositions of four grand jury witnesses).

[4] Federal Rule of Criminal Procedure 15 provides for depositions only "in order to preserve testimony for trial," and only in "exceptional circumstances and in the interest of justice." Fed. R. Crim. P. 15(a)(1). "Rule 15 does not authorize a party to take discovery depositions of the adversary party's witnesses" and Rule 15 "does not contemplate use of depositions of adverse

the statements of a government witness—such as grand jury testimony—cannot be the subject of subpoenas, discovery, or inspection until that witness has testified on direct examination. 18 U.S.C. § 3500. Rule 16 then specifically carves out Jencks material, warning that the rule does not "authorize the discovery . . . of statements made by government witnesses or prospective government witnesses except as provided in 18 U.S.C. § 3500 [the Jencks Act]." Fed. R. Crim. P. 16 (a)(2). The public policy favoring the Jencks Act is so strong that it is legal error for a trial court to order the government to disclose Jencks material before the statute requires. See United States v. Grandmont, 680 F.2d 867, 874 (1st Cir. 1982) ("[C]ourt may not compel the disclosure of statements of Government witnesses before the conclusion of their direct testimony."); see also In re United States, 834 F.2d 283, 287 (2d Cir. 1987) (district courts lack power to order early Jencks disclosure); United States v. Taylor, 802 F.2d 1108, 1117-18 (9th Cir. 1986) (same); United States v. Ordaz-Gallardo, 520 F. Supp. 2d 516, 523 (S.D.N.Y. 2007) ("District courts lack the authority to compel early disclosure of Jencks Act material.").

Here, permitting *any* of the defendants to proceed with depositions would provide Crater with a potentially improper advantage in the Criminal Action. Crater (or his affiliates or family members) could depose a witness in ways the criminal rules do not permit—through a one-sided interrogation, outside the supervision of the criminal court, in a proceeding to which the government is not a party. Such interrogation would provide Crater an opportunity to manufacture

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witnesses as discovery tools in criminal cases." United States v. Carrigan, 804 F.2d 599, 602 (10th Cir. 1986) (citation omitted). See also United States v. Fischel, 686 F.2d 1082, 1091 (5th Cir. 1982) ("[U]nlike in civil cases, the Federal Rules of Criminal Procedure provide no broad right to take depositions. . . . Depositions are not discovery tools in criminal cases."); United States v. Poulin, 592 F. Supp. 2d 137, 145 (D. Me. 2008) ("Unlike civil actions, where depositions may be taken as a matter of right and may be for discovery or to obtain evidence, depositions may be taken in a criminal case only upon court order, and are not for discovery of information but only to preserve evidence.") (citation and further quotation marks omitted).

artificial inconsistencies while the government, as a non-party, cannot object, cannot seek to refresh the witness's recollection, and cannot rehabilitate him. That is fundamentally unfair—and it is particularly inappropriate in a proceeding where the government bears the ultimate, and heavy, burden of proving Crater's guilt beyond a reasonable doubt.

The government's concerns are particularly acute where, as here, the Defendants in the CFTC Action have already sought—unsuccessfully—to create such false inconsistencies in an effort to persuade this Court to dismiss the CFTC Action. Specifically, after deposing CFTC investigator, Patricia Gomersall, the defendants filed a Motion to Vacate the Preliminary Injunction, arguing, among other things, that there were inconsistencies between a declaration prepared by Ms. Gomersall in connection with the CFTC Action and her deposition testimony. (D.E. 127, 128). This Court denied that motion on January 3, 2019. (D.E. 138).

By contrast, in requesting a stay, the government does not seek to delay disclosure, or to obtain an unfair advantage. It seeks simply to operate under the same rules that govern every criminal case. The government is entitled to the benefit of those rules, which were developed and honed on a constitutional, statutory and ultimately local level over decades, and which reflect a careful balancing of what is fair and just in criminal proceedings.

That is precisely why courts in this and other jurisdictions have customarily granted stays at least as broad as the one the government seeks here—and typically far broader. See, e.g., TelexFree, Inc., 52 F. Supp. 3d at 352 ("staying the civil proceedings would prevent the criminal defendants from exploiting liberal civil discovery rules to obtain evidence to support their criminal defenses"); Gordon, 2009 WL 2252119, at *5 (staying civil proceedings pending resolution of parallel criminal proceedings and rejecting defendant's argument "that preventing a defendant from taking advantage of broader civil discovery mechanisms is not a legitimate reason to grant a

stay,"); Nicholas, 569 F. Supp. 2d at 1071-72 (staying civil proceedings in deference to parallel criminal case and noting that "the criminal rules were not designed with the intention of stymieing a defendant's ability to mount a complete defense. Rather, they are purposefully limited so as to prevent perjury and manufactured evidence, to protect potential witness from harassment and intimidation, and to level the playing field between the government and the defendant, who would be shielded from certain discovery by the Fifth Amendment."); In re Worldcom, 2002 WL 31729501, at *10 ("The Government represents that the usefulness of its cooperating witnesses will be impaired if they are subjected to depositions or required to answer interrogatories before the completion of the criminal proceedings. Given the strong public interest in the effective enforcement of the nation's securities laws through criminal proceedings, and the representation that premature discovery of testimonial evidence from cooperating witnesses will impair that effective enforcement, the U.S. Attorney's request for a bar order is granted."); cf., e.g., S.E.C. v. Doody, 186 F. Supp. 2d 379, 381-82 (S.D.N.Y. 2002) (staying, *inter alia*, "[d]epositions of any person" who may be called as a witness in the criminal case, and noting that "[o]nce an indictment has been returned, the government often moves for and frequently obtains relief preventing a criminal defendant from using parallel civil proceedings to gain premature access to evidence and information pertinent to the criminal case"); In re Boesky, 128 F.R.D. at 49 ("[T]here is sufficient case law to support the Government's argument that the complete disclosure demanded, which would call for 3500 material not obtainable at this time under the criminal procedure rules, should be temporarily deferred because of possible prejudice to the criminal proceedings.").

In short, the government respectfully submits that the public interest is not served by granting criminal defendants extra opportunities to attack the witnesses against them in *ex parte* proceedings unsanctioned by the criminal rules and outside the purview of criminal courts. Rather,

the public interest is best served by trying criminal defendants according to the rules of criminal procedure that have been specifically designed, and continually revised, to ensure compliance with the Constitution and fairness for all sides. See, e.g., Nicholas, 569 F. Supp. 2d. at 1072 n.8 ("[T]he criminal discovery rules were crafted with an eye toward fairness for all concerned—the defendant, the prosecution, and the public.").

V. THE PARTIES WILL NOT BE UNDULY PREJUDICED BY A STAY, AND THE JUDICIAL EFFICIENCIES ARE CLEAR

The CFTC and the Defendants have consented to the stay sought by the government. A stay of all discovery would also be simpler and more efficient than a piecemeal effort to stay some portions of discovery but not others, which would necessarily give rise to disputes about whether, for example, witnesses have valid Fifth Amendment rights or legitimate privilege claims. For example, absent a stay, the CFTC would likely seek to depose Crater who would then be faced with the decision of whether to invoke his Fifth Amendment rights—likely resulting in an adverse inference against him in the CFTC Action—or, to waive that right and create statements admissible against him in the Criminal Action.[5] Staying discovery prevents the parties from needing to litigate and resolve these issues.

At the same time, the interest in judicial efficiency supports a stay. "The conviction of a civil defendant as a result of the entry of a plea or following a trial can contribute significantly to the narrowing of issues in dispute in the overlapping civil cases and promote settlement of civil litigation not only by that defendant but also by co-defendants who do not face criminal charges." In re Worldcom, 2002 WL 31729501, at *8 (emphasis added; citations omitted) (finding stay

[5] See e.g., S.E.C. v. Druffner, 517 F. Supp. 2d 502, 510-11 (D. Mass. 2007) (on motion for summary judgment, court is free to draw adverse inferences from the failure of proof of the party invoking the Fifth Amendment), aff'd sub nom. S.E.C. v. Ficken, 546 F.3d 45 (1st Cir. 2008).

"particularly compelling" in light of factual overlap and U.S. Attorney's Office's request); TelexFree, Inc., 52. F. Supp. 3d at 353 ("stay would also conserve judicial resources"). A stay of discovery would thus allow not just the litigants, but also the Court, to avoid needless work, without undue prejudice to the defendant or to the overall public interest in justice being served.

VI. THE STATUS OF THE CRIMINAL ACTION ALSO FAVORS A STAY

The status of the Criminal Action, also weighs in favor of a stay. Here, the primary defendant in the CFTC Action is under indictment. "[T]he strongest argument for granting a stay is where a party is under criminal indictment." Shkreli, 2016 WL 1122029 at *5 (citation omitted).

CONCLUSION

For the foregoing reasons, the government respectfully moves for permission to intervene in the CFTC Action, and for a stay of discovery pending resolution of the Criminal Action.

Dated: March 7, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party in the above-captioned case, via the CM/ECF electronic filing system.

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