

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 1408/May 1, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-15574

In the Matter of

HARDING ADVISORY LLC AND
WING F. CHAU

PROTECTIVE ORDER

The Securities and Exchange Commission (Commission) instituted this Administrative and Cease-and-Desist Proceeding on October 18, 2013, pursuant to Section 8A of the Securities Act of 1933, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, against Harding Advisory LLC and Wing F. Chau (collectively, Respondents). The hearing took place in New York City and Washington, D.C., over seventeen days between March 31 and April 30, 2014.

Non-party Magnetar Capital LLC and related entities (Magnetar) submitted a letter motion for protective order (Motion) with three attachments on April 18, 2014. Magnetar seeks confidential treatment for the Motion and two hearing exhibits, a trade blotter covering 2006 and 2007 (Division of Enforcement (Division) Exhibit 248) and a letter from Magnetar discussing the trade blotter (Division Exhibit 9001) (collectively, Magnetar Hearing Materials), as well as for pages 2763 through 2774 of the hearing transcript, during which James Prusko (Prusko), a Magnetar employee, testified (Sealed Transcript). I had previously closed the courtroom during the relevant portion of Prusko's testimony, and ordered that that portion of the transcript be sealed pending resolution of a motion for protective order. On April 22, 2014, I heard oral argument on the Motion from the parties and from Magnetar.

Rule 322 of the Commission's Rules of Practice permits the owner of a document which may be introduced as evidence, and a witness who testifies at a hearing, to move for a protective order. 17 C.F.R. § 201.322(a). A protective order may issue where the "harm from disclosure would outweigh the benefits of disclosure." *Id.* at § 201.322(b). Magnetar argues that multiple commercial secrets can be discerned from examining the trade blotter, including its trading strategy, allocations to managed funds, and internal asset transfers. Motion at 6. Although the age of the trade blotter suggests that any harm from disclosure is low, it is possible that Magnetar continues to hold some positions documented in the trade blotter; the uncertainty on this point weighs in favor of confidentiality. The facts from the trade blotter pertinent to Respondents' activities have been extracted and presented in summary exhibits, and what has not been so

extracted is essentially irrelevant; this, too, weighs in favor of confidentiality, because the benefit from disclosure is minimal. Overall, I am satisfied that a protective order should issue as to the trade blotter.

The Motion discusses the contents of the trade blotter in general terms, but at times with sufficient specificity that the Motion should also be protected, for the same reason as the trade blotter. Division Exhibit 9001 discusses the trade blotter with insufficient specificity to warrant protection, but it does cite to certain Commission investigations, the statuses of which are unknown. Although the Division did oppose the Motion in certain respects, it did not oppose confidential treatment for Division Exhibit 9001. In view of the uncertainty regarding the cited investigations, the harm from disclosing Division Exhibit 9001 outweighs the benefits. Although Prusko's sealed testimony did not pertain to his activities at Magnetar, I will allow Magnetar to represent his interests in considering the Motion. As I noted in open court, Prusko's sealed testimony was irrelevant, and I find that the harm of disclosure outweighs the nonexistent benefits.

For the reasons I gave in open court on April 22, 2014, I find that the form of the protective order requested by Magnetar is unduly restrictive. In particular, I find that there is no need for additional protection of documents or information produced by Magnetar to the Commission, beyond the protections already applicable to all persons who produce documents to the Commission. However, I will order that the Division furnish to Magnetar a copy of the parties' Joint Exhibit List once it is finalized, so that Magnetar is on notice of which of its documents have been admitted in evidence.

Accordingly, it is hereby ORDERED that the Motion is GRANTED IN PART and:

1. The Magnetar Hearing Materials shall be disclosed only to: (1) the parties to this action and their counsel and trial teams, including any experts and contractors; (2) witnesses called in this proceeding; and (3) the Commission, including its staff, employees, and contractors.
2. The Sealed Transcript shall be disclosed only to: (1) the parties to this action and their counsel and trial teams, including any experts and contractors; and (2) the Commission, including its staff, employees, and contractors.
3. All persons who receive access to the Magnetar Hearing Materials and the Sealed Transcript shall keep the documents and information contained therein confidential, and shall not divulge the Magnetar Hearing Materials and the Sealed Transcript to any person except as expressly authorized by this Protective Order or further order.
4. Any portion of a submission in this proceeding or any appeal thereof to the Commission that may become public and which discloses the Magnetar Hearing Materials, the Sealed Transcript, or any portion of their contents, shall be filed under seal, and any person so filing shall simultaneously file a motion to file under seal pursuant to 17 C.F.R. § 201.322.

5. The requirements of sealing and confidentiality of the Magnetar Hearing Materials shall not apply to any reference only to the existence of the Magnetar Hearing Materials.
6. The Division shall furnish to Magnetar a copy of the parties' Joint Exhibit List no later than five business days after the Joint Exhibit List is filed with the Office of the Secretary.
7. Any person requesting relief from, or modification of, this Protective Order may file an appropriate motion.

Cameron Elliot
Administrative Law Judge