

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4454/December 15, 2016

ADMINISTRATIVE PROCEEDING

File No. 3-17716

In the Matter of

ROBERT L. BAKER,  
JACOB B. HERRERA,  
MICHAEL D. BOWEN and  
TERRENCE A. BALLARD

PROTECTIVE ORDER

On December 8, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondents. On December 12, 2016, the Division of Enforcement filed a motion for a protective order. The proposed order covers sensitive personal information contained in investigative record materials collected by the Division of Enforcement in connection with its investigation.

I GRANT the motion and adopt the proposed order below with some modifications. I find that the harm resulting from the public disclosure of sensitive personal information (as defined in paragraph 1 below) would outweigh any benefit of disclosure. *See* 17 C.F.R. § 201.322(b). The proposed order defined sensitive personal information as including the financial account statements of entities; I have not adopted this language. If the Division believes that the financial account statements of entities should be protected, it should file a motion with a more particularized basis.

*Protective Order*

1. As used in this protective order, the term “sensitive personal information” shall mean any documents or other information containing any one or more of the following categories of personal and private documents or information: (a) a social security or tax identification number; (b) financial account statements of individuals or containing information about individuals or their financial holdings, including statements for any bank account, credit card account, brokerage account, mortgage, student loan, or other loan; (c) any financial account number, including for a bank account, credit card account, brokerage account, mortgage, student loan, or other loan; (d) tax returns; (e) the home address and phone number of any individual person; (f) the birth date of any individual person; or (g) the name of any individual person who, at the time the OIP was filed in this matter, was known to be less than eighteen years old. Sensitive personal information does not include the last four digits of a financial account number

or phone number, the city and state of an individual's home address, the year of an individual's birth, or copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website.

2. Sensitive personal information disclosed to any Respondent in this action or to his counsel during the course of this action:

- a. Shall be used only for the purposes of this action;
- b. Shall not be used for any business or commercial purposes;
- c. Shall not be published to the public in any form, except as permitted by Paragraphs 5, 6, and 8, below;

d. May be disclosed only to the following persons, on an as-needed basis in the course of the litigation, with reasonable precautions taken to insure the confidentiality of the information:

- i. The presiding administrative law judge in this proceeding;
- ii. A Respondent;
- iii. Employees or contractors of any law firm that represents a Respondent, including attorneys and secretarial, clerical, paralegal, legal, or student personnel, and any person or entity with whom a Respondent's counsel contracts to reproduce or manage documents;
- iv. Clerical or ministerial service providers, such as outside copying or litigation support personnel, retained by the parties to this proceeding or their counsel;
- v. Non-party witnesses;
- vi. A document's author(s) or recipient(s);
- vii. Independent (non-employee) consultants or expert witnesses, or advisors retained by any of the parties to this action in connection with this action;
- viii. Court reporters or stenographers – and their employees – who are engaged to record deposition or hearing testimony;
- ix. The Securities and Exchange Commission and its employees, agents, or contractors; or
- x. Such other persons as hereafter may be authorized by either (1) written consent of all the parties or (2) the administrative law judge upon motion of a party.

3. A copy of this protective order shall be delivered to each of the named parties or persons within paragraph 2.d above to whom a disclosure of sensitive personal information is made, at or before the time of disclosure, by the party making the disclosure. The provisions of this protective order shall be binding upon each person to whom disclosure is made.

4. The provisions of this protective order shall not be construed as preventing:
- a. Any disclosure of sensitive personal information to any party to this action;
  - b. Any disclosure of sensitive personal information to any administrative law judge, law clerk, or member or employee of the Commission for any purposes of this action; or

c. Any disclosure of sensitive personal information for the purpose of enforcing the criminal law or as otherwise required by law.

5. Notwithstanding the foregoing, the Division may use and disclose, without notice to the Respondents or any other person, any and all materials in the investigative record materials to the extent permitted by law in conjunction with its obligations and responsibilities to investigate potential violations of, and enforce, the federal securities laws, consistent with the "Routine Uses of Information" set forth in the Commission's Form 1662 (Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena).

6. Except as otherwise ordered, prior to making a public filing of any document in these proceedings, the Division and Respondents shall redact all sensitive personal information from the document. The Division and Respondents shall take reasonable and appropriate measures to prevent unauthorized disclosure of sensitive personal information contained in documents produced or filed in these proceedings, including by persons to whom the Division or Respondents show or give access to such documents. In the event that redacting a filing is impracticable or would result in a filing being almost entirely redacted, the parties shall file the document under seal together with a copy of this protective order. If a document is filed under seal, it may be disclosed to the parties or persons under paragraph 2.d. In addition, if a party intends to make a filing (such as a brief or motion) that incorporates sensitive personal information in the written text, the party must: (1) file a version clearly labeled "under seal," with the sensitive personal information subject to this order noted by brackets, bold typeface, or some other clear indications; and (2) file a public redacted version that removes the sensitive personal information.

7. This protective order shall not:

- a. Operate as an admission by any party that any particular document or other discovery material in fact contains sensitive personal information;
- b. Prejudice in any way the right of a party to seek a determination from the administrative law judge of whether such material is or should be subject to the terms of this protective order;
- c. Prevent a Respondent's or non-party's disclosure of its own sensitive personal information; or
- d. Prejudice in any way the right of any party to apply to the administrative law judge for a further protective order relating to any other confidential information or sensitive personal information.

8. Nothing in this protective order shall preclude the parties from offering sensitive personal information into evidence at the hearing of this action or in any other proceeding in this action, subject to the restrictions set forth in this protective order.

9. This protective order shall survive the termination of the litigation. Unless otherwise agreed or ordered, this protective order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

10. Within sixty days after dismissal or entry of final judgment not subject to further appeal, all investigative record materials, including copies of such documents, shall be returned to the Division unless: (1) the document has been offered in evidence; or (2) the Division agrees to destruction in lieu of return. Notwithstanding the above requirement to return or destroy investigative record materials, counsel may retain attorney work product, including an index which refers or relates to documents containing sensitive personal information, so long as that work product does not duplicate verbatim substantial portions of the text or images of such documents. This portion of the work product containing sensitive personal information shall continue to be protected under the terms of this protective order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use documents containing sensitive personal information.

11. All sensitive personal information received by the Respondents shall be used for the sole purpose of defending this proceeding. No sensitive personal information may be used by the Respondents for any other purposes, including any litigation, arbitration, or any other proceeding, or for any commercial purpose.

12. This protective order shall be subject to modification by the administrative law judge on his or her own motion or on motion of a party or any other person with standing concerning the subject matter.

13. This protective order shall take effect when entered and shall be binding upon all persons made subject to this protective order by its terms.

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Jason S. Patil  
Administrative Law Judge