

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4790/May 8, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-17813

In the Matter of

WINDSOR STREET CAPITAL, L.P.
(f/k/a MEYERS ASSOCIATES, L.P.) and
JOHN DAVID TELFER

PROTECTIVE ORDER

The Securities and Exchange Commission instituted this proceeding on January 25, 2017, with an order instituting proceedings (OIP) pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940. At the request of the Division of Enforcement, I issued a protective order covering documents in the Division's investigative file. *Windsor St. Capital, L.P.*, Admin. Proc. Rulings Release No. 4587, 2017 SEC LEXIS 382 (ALJ Feb. 3, 2017). The hearing is scheduled to begin on June 19, 2017. *Windsor St. Capital, L.P.*, Admin. Proc. Rulings Release No. 4643, 2017 SEC LEXIS 635 (ALJ Mar. 1, 2017).

On May 4, 2017, the Division submitted an uncontested motion for a protective order and a draft protective order to permit it to produce to Respondents certain reports covered by the Bank Secrecy Act (BSA) and regulations, 31 U.S.C. § 5318(g)(2); 31 C.F.R. § 1023.320(e)(2). Mot. at 1. In its motion, the Division represents that it has consulted with the U.S. Department of the Treasury Financial Crimes Enforcement Network and has determined that it may produce the reports to Respondents, subject to a protective order. *Id.* at 1-2.

Pursuant to Commission Rule of Practice 230, the Division wants to provide Respondents with certain documents (Confidential BSA Material) obtained by the Division in connection with the Commission's investigation. *See* 17 C.F.R. § 201.230. The Confidential BSA Material is protected from certain types of disclosure by the BSA and related regulations, 31 U.S.C. § 5318; 31 C.F.R. § 1023.320. The Bank Secrecy Act, passed in 1970 and amended since, requires reports of certain financial activity to the Department of the Treasury. Under the BSA and regulations, the federal government treats almost everything that transpires pursuant to the statute as confidential, i.e., the BSA "extends special confidentiality protection to [Suspicious Activity Reports] and even to the fact that one has been filed." Statement of Interest of the United States at 2, *Wuliger v. Office of the Comptroller of the Currency*, No. 1:05-cv-0108 (N.D. Ohio Apr. 5, 2005), ECF No. 28, <https://www.fincen.gov/sites/default/files/guidance/wuliger.pdf>. I learned this first-hand in *Ronald S. Bloomfield*, Initial Decision Release No. 416-A, 2011 SEC LEXIS 1457 (Apr. 26,

Ruling

Rule 322 provides that a party may ask for a protective order limiting disclosure of a document or testimony that contains confidential information. 17 C.F.R. § 201.322(a). The basis for issuance is met in this situation because the harm resulting from disclosure would outweigh the benefits of disclosure. 17 C.F.R. § 201.322(b). Accordingly, I GRANT the Division's uncontested motion and ORDER the following protective order. Nothing in this order obviates the Division's obligations under applicable laws and rules. This protective order addresses certain uses or disclosures of the Confidential BSA Material based on the Division's representation that it has consulted with the Treasury Department in meeting its obligations.

1. As used in this protective order, the term "Confidential BSA Material" shall mean any document produced by the Division that it labels, or otherwise identifies as, "Confidential BSA Material," as well as any subsequent document produced or created by any party in this proceeding, or by the Commission and any of its employees, that contains, identifies, or references any information contained in any "Confidential BSA Material." Confidential BSA Material 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. Subject to paragraph 1.e. below 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 administrative law judge in this proceeding and the staff of the Office of Administrative Law Judges;
 - 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. Independent (non-employee) consultants or expert witnesses, or advisors retained by any of the parties to this action in connection with this action;
 - vii. Court reporters or stenographers – and their employees – who are engaged to record deposition or hearing testimony;
 - viii. The Securities and Exchange Commission and its employees, agents, or contractors; or

¹ This corrected initial decision omitted portions of the initial decision issued on April 14, 2011, based on information from the Treasury Department that portions of that initial decision might violate provisions of the BSA.

- ix. 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.
 - e. Notwithstanding the foregoing, this protective order prohibits any person from disclosing Confidential BSA Material, or the existence of Confidential BSA Material, to any person or entity that is the subject of any Confidential BSA Material.
2. A copy of this protective order shall be delivered to each of the named parties or persons within paragraph 1.d above to whom a disclosure of Confidential BSA Material 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.
3. The provisions of this protective order shall not be construed as preventing:
 - a. Any disclosure of Confidential BSA Material to any party to this action; or
 - b. Any disclosure of Confidential BSA Material to the staff of the Office of Administrative Law Judges, or any member or employee of the Commission for any purposes of this action.
4. Notwithstanding any other provision of this order, the Division may use and disclose, without notice to the Respondents or any other person, any Confidential BSA 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.
5. Except as otherwise ordered, prior to making a public filing, or other public use, of any document in these proceedings, the parties shall redact all Confidential BSA Material from the document. The parties also shall take reasonable and appropriate measures to prevent unauthorized disclosure of Confidential BSA Material contained in documents produced or filed in these proceedings, including by persons to whom they 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 1.d. In addition, if a party intends to make a filing (such as a brief or motion) that incorporates Confidential BSA Material in the written text, the party must: (1) file a version clearly labeled “under seal,” with the Confidential BSA Material subject to this order noted by brackets, bold typeface, or some other clear indications; and (2) file a public redacted version that removes the Confidential BSA Material.
6. This Protective Order shall not:
 - a. Operate as an admission by any party that any particular document or other discovery material in fact contains Confidential BSA Material;
 - 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; or
 - c. 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 BSA Material.
7. Nothing in this protective order shall preclude the parties from offering Confidential BSA Material 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.

8. 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.

9. Within sixty (60) days after dismissal or entry of final judgment not subject to further appeal, all Confidential BSA Material, 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 Confidential BSA Material, counsel may retain attorney work product, including an index which refers or relates to documents containing Confidential BSA Material, 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 Confidential BSA Material 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 Confidential BSA Material.

10. All Confidential BSA Material received by the Respondents shall be used by Respondents for the sole purpose of defending this proceeding. No Confidential BSA Material may be used by the Respondents for any other purposes, including any litigation, arbitration, or any other proceeding, or for any commercial purpose.

11. 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.

12. This protective order shall take effect when entered and shall be binding upon all Respondents, Respondents' counsel, and persons made subject to this protective order by its terms.

Brenda P. Murray
Chief Administrative Law Judge