

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 1885/October 2, 2014

ADMINISTRATIVE PROCEEDING  
File No. 3-15873

In the Matter of

THOMAS R. DELANEY II and  
CHARLES W. YANCEY

ORDER GRANTING PROTECTIVE  
ORDER

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on May 19, 2014, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940. The hearing will begin on October 27, 2014.

On October 1, 2014, Respondent Charles W. Yancey (Yancey) and the Commission's Office of Compliance Inspections and Examinations (OCIE), through the Commission's Office of the General Counsel, filed a Joint Motion for Protective Order (Joint Motion) over materials OCIE intends to produce in response to a subpoena duces tecum served on it by Yancey on September 19, 2014 (OCIE subpoena). The Joint Motion represents that the materials to be produced contain sensitive customer, financial, and business or other information, including personally identifiable information, which warrant confidential treatment as a matter of law. Joint Motion at 2. Attached to the Joint Motion is an Agreed Protective Order Regarding Production of Confidential Information. *Id.* at Ex. B.

Rule 322 of the Commission's Rules of Practice permits protective orders over documents where the "harm resulting from disclosure would outweigh the benefits of disclosure." 17 C.F.R. § 201.322(b). Based on the representations made in the Joint Motion, I find that the harm resulting from disclosure of the sensitive information described in the Joint Motion outweighs the benefits of disclosure.

Accordingly, I GRANT the Joint Motion and ORDER that the following provisions shall be applicable to the production and use of documents pursuant to the OCIE subpoena:

1. "This proceeding" as used herein shall refer only to the above-referenced administrative proceeding and shall not apply to any other case or proceeding.

2. The OCIE subpoena seeks non-privileged documents related to OCIE's Regulation SHO examinations of Penson Financial Services, Inc. during the years 2008-2011 (herein referred to as "Examination Materials"). Certain Examination Materials were produced by the Division of Enforcement as part of this proceeding prior to the service of the OCIE Subpoena. OCIE believes the Examination Materials contain information that is confidential as a matter of law.

3. "Confidential Information," as used herein, includes the information that OCIE believes to be confidential as a matter of law, including, but not limited to, personally identifiable information ("PII") subject to the Privacy Act, 5 U.S.C. § 552a, including customer names, contact information (including addresses), account numbers, social security numbers, driver's license numbers, dates of birth, and any other identifying information that is linked or linkable to a specific individual and could be used to distinguish or trace individual identity. Some documents may also contain sensitive commercial, financial, and/or business information.

4. OCIE, through the Commission's Office of General Counsel, may designate any document produced in this proceeding as confidential and subject to this Protective Order by placing the word "CONFIDENTIAL" on the document in a manner that will not interfere with the legibility of the document. Documents shall be designated as "CONFIDENTIAL" prior to or at the time of the production of the document.

5. Notwithstanding paragraph 2 above, any Examination Materials containing PII that were produced in this proceeding by the Division of Enforcement prior to the entry of this Protective Order are deemed to have been designated "CONFIDENTIAL" at the time of their production to Respondents and shall be treated as if they bear such a legend.

6. Subject to paragraph 7 below, Confidential Information shall only be disclosed to Qualified Persons. "Qualified Person" as used herein means:

- (a) Attorneys of record in this proceeding, employees of such counsel, and other attorneys retained by a party for this proceeding to whom it is necessary that the material be shown for the purposes of this proceeding, or
- (b) Persons, such as independent consultants or other experts employed by a party or its attorneys of record in this proceeding for the purpose of assisting in the preparation of this proceeding and to whom it is necessary that the material be shown for the purposes of this proceeding, or
- (c) Parties to this proceeding, to whom it is necessary that the material be shown for the purposes of this proceeding,
- (d) Witnesses in this proceeding, to whom it is necessary that the material be shown for the purposes of this proceeding,

(e) The Commission, including the Office of the Secretary and the Office of Administrative Law Judges, or

(f) Other persons by written consent of the Commission or upon order by the Administrative Law Judge presiding over this proceeding or a court and on such conditions as may be agreed or ordered.

7. For documents: (1) designated as “CONFIDENTIAL” and (2) containing PII that has not been redacted, prior to disclosing such documents to any Qualified Person other than Commission personnel, counsel desiring to make such a disclosure will obtain from such person a written acknowledgement, substantially in the form provided in Ex. B to the Joint Motion, stating that such person has read this Protective Order and agrees to be bound by its terms. All such acknowledgements shall be retained by the disclosing counsel and, only upon motion for good cause shown, will be made available to counsel for other parties to this proceeding and/or the Commission’s Office of the General Counsel, as counsel for OCIE.

8. All Confidential Information produced pursuant to the OCIE subpoena shall not be used by any person for any purpose whatsoever other than to prepare for and conduct this proceeding. Respondents’ counsel shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as “CONFIDENTIAL”, including copies of documents.

10. All PII shall be redacted prior to using or introducing any of the produced documents as exhibits to any brief, memorandum, pleading, or other submission, or at the hearing in this proceeding by the party seeking such introduction. All parties agree to take reasonable and appropriate measures to prevent unauthorized disclosure of PII contained in documents produced or filed in these proceedings, including by persons to whom the parties show or give access to such documents.

11. Unless otherwise agreed or ordered, this Protective Order shall remain in force after dismissal or entry of final judgment in this proceeding. Within sixty days after dismissal or entry of final judgment, all documents designated “CONFIDENTIAL,” including any copies of such documents, shall be returned to OCIE or destroyed in lieu of return, unless such document has been offered into evidence or filed without restriction as to disclosure.

13. This Protective Order shall take effect when entered and shall be binding upon all parties, including the Commission, all Respondents and their counsel, and any persons made subject to this Protective Order by its terms.

14. Nothing in this Protective Order shall prevent disclosure beyond the terms of this Order if OCIE, through the Office of the General Counsel, consents to such disclosure, or if the Administrative Law Judge, after notice to all affected parties, orders such disclosure.

15. Nothing in this Protective Order shall prevent any party from disclosing Confidential Information to a court or governmental body when required to do so by statute, court order, or order of any regulatory agency, after notice to all affected parties.

SO ORDERED.

---

Jason S. Patil  
Administrative Law Judge