

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 2373/March 3, 2015

ADMINISTRATIVE PROCEEDING

File No. 3-16349

In the Matter of

BARBARA DUKA

PROTECTIVE ORDER

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against Respondent Barbara Duka (Respondent) on January 21, 2015, pursuant to Section 8A of the Securities Act of 1933, Sections 15E(d) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940.

On March 2, 2015, the Division of Enforcement (Division) filed an Unopposed Motion to Enter Stipulated Protective Order (Motion), to which were attached three documents: (1) a Proposed Stipulated Protective Order Granting the Motion (Proposed Order); (2) the Declaration of David Nicolardi (Nicolardi Declaration), an attorney in the Commission's Office of Credit Ratings (OCR); and (3) an Agreement to be Bound by Protective Order. The Motion requests entry of a protective order governing dissemination of certain documents received by OCR and produced to Respondent as part of this proceeding's investigative file (Examination Materials). Motion at 1-2. The Division represents that Respondent has stipulated to entry of the Proposed Order. *Id.* at 2.

The Motion is GRANTED IN PART. The Nicolardi Declaration establishes that the Examination Materials are "sensitive customer, financial, and business or other information" received by OCR pursuant to two examinations of Standard and Poor's Rating Services (S&P), and that the harm from their public disclosure outweighs the benefits of such disclosure. *See* 17 C.F.R. § 201.322(b); Motion at 1; Nicolardi Declaration at 1-3. The Examination Materials will therefore be subject to a protective order and handled, as defined by the Proposed Order, as "CONFIDENTIAL." If either party seeks a protective order for documents other than the Examination Materials, a separate showing will be necessary

Furthermore, the Proposed Order establishes an apparently more sensitive category of materials to be handled as "ATTORNEYS EYES ONLY." Proposed Order at 3. Neither the Proposed Order nor the Motion defines or describes such material, beyond the fact that the Division has the discretion to designate a document as "ATTORNEYS EYES ONLY." *Id.* This is insufficient for me to conclude that the harm from public disclosure of "ATTORNEYS EYES

ONLY” material outweighs the benefits of such disclosure. If either party seeks a more restrictive protective order for more sensitive material, a more particularized showing will be necessary.

It is, therefore, hereby ORDERED that:

1. The term “Proceeding” as used herein shall refer only to the present Administrative Proceeding and shall not apply to any other case or proceeding.

2. The Examination Materials to be produced in this proceeding relate to OCR’s examinations of S&P during 2012 and 2013.

3. “Confidential Information,” as used herein, includes the information in the Examination Materials that OCR believes to be confidential, including, but not limited to, documents containing sensitive commercial, financial, and/or business information or documents.

4. OCR, through the Division, may designate any of the Examination Materials 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. Subject to paragraph 6 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) Any witness at the hearing in 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 parties 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.

6. For documents designated as “CONFIDENTIAL,” prior to disclosing such documents to any Qualified Person other than Commission personnel or witnesses testifying at the hearing, counsel desiring to make such a disclosure will obtain from such person a written acknowledgement, substantially in the form provided in Exhibit C to the 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.

7. All Confidential Information produced shall not be used by any person for any purpose whatsoever other than to prepare for and conduct this proceeding, including any appeal or petition for review. Respondent’s counsel shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as “CONFIDENTIAL,” including copies of documents.

8. If a party objects to the designation of any material produced as Confidential, that party’s counsel may state the objection in writing to opposing counsel. Counsel shall promptly confer, in good faith, to resolve any dispute concerning the designation and treatment of such material. If counsel are unable to resolve the dispute, the party objecting to the designation may file an application with the Administrative Law Judge challenging the designation. Until such objection is resolved, the parties shall treat the designated materials as Confidential Information in accordance with the terms of this Protective Order.

9. 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 the Division or destroyed in lieu of return, unless such document has been offered into evidence or filed without restriction as to disclosure, provided, however, that counsel for Respondent and the Division may retain all or a portion of the Confidential Information in a locked facility for a period of time consistent with their respective retention policies, provided such Confidential Information is maintained confidentially pursuant to the terms of this Protective Order, and shall promptly destroy such material upon the end of such retention period.

10. This Protective Order shall take effect when entered and shall be binding upon all parties, including the Division, Respondent and her counsel, and any persons made subject to this Protective Order by its terms.

11. 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.

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Cameron Elliot  
Administrative Law Judge