

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-20531

In the Matter of

**Horter Investment Management, LLC
and Drew K. Horter,**

Respondents.

DIVISION OF ENFORCEMENT’S MOTION FOR PROTECTIVE ORDER

Rule 230 of the Securities and Exchange Commission’s Rules of Practice (the “Rules of Practice”) requires the Division of Enforcement (the “Division”) to make available to Respondents for inspection and copying certain documents (hereinafter referred to as “Investigative Record Materials”) that the Division obtained prior to the institution of this proceeding in connection with its investigation concerning the allegations set forth in the Commission’s September 8, 2021 Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (the “OIP”). *See* 17 C.F.R. § 201.230. However, many of these Investigative Record Materials contain sensitive financial and personal information, including personally identifiable information (“PII”), relating to persons other than the Respondents. Thus, the Division respectfully moves pursuant to Rule 322 of the Rules of Practice for the entry of a protective order – in the form attached hereto as Exhibit A – to limit from public disclosure sensitive financial and personal information and to govern the treatment and use of materials produced in this proceeding. The Respondents have no objection to the entry of this protective order and have

agreed to abide by it while this Motion is pending. The Division respectfully requests the entry of this protective order.

Pursuant to Rule 322(a), a party may request a protective order to limit from public disclosure documents that contain confidential information. *See* 17 C.F.R. § 201.322(a). Rule 322(a) states: “[i]n any proceeding as defined in Rule 101(a), a party . . . may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents that contain confidential information.” *Id.* A motion for protective order shall be granted if the harm resulting from disclosure would outweigh the benefits of disclosure. *See* 17 C.F.R. § 201.322(b); *see Thrastos Tommy Petrou*, Release No. 2912, 2015 SEC LEXIS 2792 [AP File No. 3-16217] (July 9, 2015) (granting protective order to protect sensitive financial information and PII because “the harm resulting from the disclosure of these documents outweighs the benefits of public disclosure”); *Natural Blue Resources, Inc., James E. Cohen, and Joseph A. Corazzi*, Release No. 1687, 2014 SEC LEXIS 2864 [AP File No. 3-15974] (Aug. 8, 2014) (entering protective order to protect PII in documents); *Kevin Hall, CPA & Rosemary Meyer, CPA*, Release No. 2668, 2007 WL 2301546 (Aug. 13, 2007) (granting protective order because the documents submitted contained sensitive information and the harm resulting from disclosure outweighed the benefits).

The Investigative Record Materials in question include, among other things, bank and brokerage records of individuals who are not parties to this matter, as well as confidential investor information. The documents are comprised of tens of thousands of pages of records from various sources containing dates of birth, social security numbers, phone numbers, account numbers, and information about employment and income for investors. Furthermore, the Investigative Record Materials contain thousands of bank and brokerage transactions conducted

by individuals and entities in their respective accounts. There is no benefit to disclosure of this information to the public and the potential harm to investors if this information were part of the public record is substantial.

Moreover, a protective order is the only mechanism through which the Respondents will be entitled to receive complete, unredacted versions of the documents. Absent a protective order, the Division would need to redact, among other things, PII from each and every document comprising part of the Investigative Record Materials. In addition to the substantial redactions this task would produce, this approach would obligate Division staff to review more than 190,000 documents to search for and redact this sensitive information. This task would require thousands of hours to complete, and would be an impractical and overly burdensome mechanism to safeguard this information in comparison to the entry of the proposed protective order.

For the reasons stated above, the Division requests that a protective order be entered pursuant to Rule 322(b) of the Rules of Practice to limit from disclosure to the public confidential, personally identifiable information.

Dated: October 8, 2021

Respectfully Submitted,

/s/ Alyssa A. Qualls

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the foregoing Division of Enforcement's Motion for a Protective Order to be served on the following on this 8th day of October, 2021, in the manner indicated below:

BY EMAIL
Matthew L. Fornshell, Esq.
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Dated: October 8, 2021

/s/ Alyssa A. Qualls

Alyssa A. Qualls

EXHIBIT A

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PROTECTIVE ORDER

On October 8, 2021, the Division of Enforcement submitted a motion for a protective order to cover confidential financial and personal identifying information of third parties in its investigative file. The proposed protective order would (1) limit the parties' use of the confidential information to this proceeding, and (2) require the parties to redact any confidential information before filing it with the Office of the Secretary. Respondents agree to the entry of the requested protective order.

I GRANT the motion and adopt the following protective order, noting that the order limits the use and dissemination of confidential information only, and does not limit any party's use of non-confidential information. I find that the harm resulting from disclosure of confidential information would outweigh the benefits of disclosure. *See* 17 C.F.R. § 201.322(b).

Protective Order

As used in this protective order, the term "confidential information" shall mean any one or more of the following categories of information: (a) social security or tax identification number; (b) individuals' financial account statements, including statements for any bank account, credit card account, brokerage account, mortgage, student loan, or other loan; (c) financial account number, including bank account, brokerage account, and investment account numbers; (d) tax returns; (e) the home address and phone number of any individual person; (f) credit card or debit card number; (g) passport number, driver's license number, or state-issued identification number; (h) date of birth; and (i) personal medical information. Confidential 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 Securities and Exchange Commission's public website.

The Division and Respondents shall maintain the confidentiality of the confidential information, shall use it solely for the purposes of this proceeding, and shall not disclose it to any

third party unless such disclosure is required or permitted by applicable statute or regulation, lawfully issued subpoena or court order, or my prior authorization.

Nothing herein limits Respondents' ability to use or disclose their own confidential information in any manner. Moreover, nothing herein restricts the Division from disclosing the confidential information in accordance with the principal or routine uses specified in SEC Form 1662.

If the Division or Respondents wish to publicly file any document containing confidential information in this proceeding, each will ensure that the confidential information is redacted in those copies filed on the Securities and Exchange Commission's eFAP electronic filing system and/or submitted to the Secretary's Office for public filing. 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 order. If a party intends to make a filing (such as a brief or motion) that incorporates confidential information in the written text, the party must: (1) file a version clearly labeled "under seal," with the confidential information subject to this order noted by brackets, bold typeface, or some other clear indication; and (2) file a public redacted version that removes the confidential information.

Nothing in this protective order shall preclude the parties from offering confidential information into evidence at the hearing in this matter or in any other proceeding in this matter, subject to the restrictions set forth in this protective order.

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 a final judgment not subject to further appeal.

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

Administrative Law Judge