

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21261

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In the matter of
ADAM MATTESSICH

Respondent.
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MEMORANDUM OF LAW OF RESPONDENT ADAM MATTESSICH
IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

Respondent Adam Mattessich (“Respondent”) respectfully submits this memorandum in support of Respondent’s motion for a protective order pursuant to Rule 322 of the Commission’s Rules of Practice (“Rules”) permitting the Commission to consider certain sensitive medical information submitted in redacted form in April 3, 2023 opposition motion for summary disposition of the Division of Enforcement (“Division”).

PROCEDURAL HISTORY

On March 3, 2023, the Division filed a motion for summary disposition in which it requested that the Commission impose securities industry and penny stock bars on Respondent with rights to reapply for admission after two years.

Respondent filed his opposition to that motion on April 3, 2023. That opposition included certain sensitive medical information that was redacted from both the memorandum of law and Respondent’s supporting affidavit. Respondent filed both redacted and unredacted versions of those documents and served both versions on the Division of Enforcement by email on the same day.¹

¹ See email dated April 3, 2023, **Exhibit A**.

The Division of Enforcement filed a reply in further support of its motion on April 18, 2023. The motion was fully submitted as of that date.

On April 16, 2024, the Commission's Office of the Secretary contacted the undersigned and requested copies of Respondent's opposition papers. Later that day, Respondent transmitted those documents, which included unredacted versions of the documents filed the year prior.²

On September 11, 2024, the Commission issued an Order Regarding Redacted Filings ("Order," **Exhibit C**), which directed that "if Respondent wishes for the Commission to consider the information redacted from the April 3, 2023 filings, he shall move for a protective order pursuant to Rule of Practice 322 by September 25, 2024. This motion follows.

DISCUSSION

Rule 322 provides that a party may seek a protective order limiting disclosure of a document or testimony that contains confidential information. 17 C.F.R. § 201.322(a). Such an application will be granted "only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure." 17 C.F.R. § 201.322(b); *see also, e.g., Horter Inv. Mgmt, LLC*, Advisers Act Release No. 5890, 2021 WL 4847122, at *1 (Oct. 18, 2021). That standard is easily satisfied here. Respondent seeks the redaction only of a very limited amount of personal medical information.

Personal medical information like that sought to be withheld from the public record in this application appears to have long and often been approved for protection by the Commission. *See e.g., Horter Inv. Mgmt, LLC*, 2021 WL 4847122, at *2 (including as "Confidential Information" the category of "personal medical information"); *Christopher E. Knauth*, CPA, Exchange Act Release No. 92482, 2021 WL 3128191 (July 23, 2021) (same); *LBB & Assocs. Ltd.*, Exchange Act Release No. 85569, 2019 WL 1531832 (Apr. 9, 2019) (same). This is

² *See* email dated April 16, 2024, **Exhibit B**.

consistent with Rule 322 because the disclosure of such information would have negligible public benefit and is substantially outweighed by the harm of disclosure. Applied to this matter, there appears to be no benefit in the public learning the intimate details of Mr. Mattessich's medical history. By contrast, the harm to him and his privacy would be substantial and unnecessary.

In the Order, the Commission also instructs Respondent to “address the degree to which any portion of the redacted information is already in the public record in connection with the district court case underlying this proceeding,” citing *SEC v. Mattessich*, No. 18-cv-5884, 2022 WL 16948236, at *12 (S.D.N.Y. Nov. 15, 2022). None of the redacted information has been publicly disclosed. While the information was presented in filings to the district court, that court, in conformity with common court practice, permitted Mr. Mattessich to file all such information under seal. See SDNY Electronic Case Filing Rules & Instructions § 21.4 (suggesting that “medical records, treatment and diagnosis” be redacted) (available at https://nysd.uscourts.gov/sites/default/files/pdf/ecf_rules/ECF%20Rules%20020320.pdf).

Respondent thus moves for a Protective Order upon the terms stated below. The Division consents to this application and the proposed protective order below.³ Respondent further requests that the Commission, should it grant the application, consider the redacted information contained in Respondent's April 3, 2023 opposition memorandum of law (attached in unredacted form as **Exhibit E**) and supporting affidavit (attached in unredacted form as **Exhibit F**) in resolving the Division's motion for summary disposition.

³ See email date September 23, 2024, **Exhibit D**.

PROPOSED PROTECTIVE ORDER

Respondent proposes the following protective order, which is consistent with the language of *Horter Inv. Mgmt, LLC*, 2021 WL 4847122, at *2, and to which the Division consents.

1. In this order (“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 includes any “sensitive personal information” as defined in Commission Rule of Practice 151(e), 17 C.F.R. § 201.151(e). Confidential Information does not include the last four digits of a financial account number or phone number, the city and state portion of an individual’s home address, the year of an individual’s birth, and copies of unredacted filings by regulated entities or registrants that are available on the Commission’s public website.
2. The Division of Enforcement 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 Commission, hearing

officer, or court order. Nothing in this Protective Order limits Respondents' ability to use or disclose their own Confidential Information in any manner. Nothing in this Protective Order shall prevent the Division from complying with its obligations under law concerning disclosure of documents, including but not limited to its published Routine Uses of Information in Forms 1661 and 1662,⁵ the Freedom of Information Act, 5 U.S.C. § 552 et seq., and any other statutes or rules applicable to the Division, or interfere with the Division's use of information for law enforcement activities and to otherwise regulate, administer, and enforce the federal securities laws.

3. In making any Commission filings, the Division or Respondents may describe Confidential Information or attach Confidential Information as exhibits or in exhibits. Such a filing shall not constitute a violation of this Protective Order. A filing that contains Confidential Information will be filed under the sealing and redaction procedures of Rule of Practice 322(b), 17 C.F.R. § 201.322(b).
4. Nothing in this Protective Order shall preclude the parties from offering Confidential Information into evidence in any other proceeding, subject to the restrictions set forth in this Protective Order.
5. 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.

6. This Protective Order shall be subject to modification by the Commission or a presiding hearing officer on the Commission's or the officer's own motion, on the Division's or Respondents' motion, or on the motion of any other person with standing.

CONCLUSION

For the foregoing reasons, Respondent requests that the Commission grant this motion entering a Protective Order, as proposed above, and consider the redacted information submitted in Respondent's April 3, 2023 filings in opposition to the Division's motion for summary disposition.

Dated: New York, NY
September 24, 2024

Respectfully submitted,

/s/ Noam Greenspan
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Certificate of Service

I hereby certify that copies of Respondent's Memorandum of Law and Exhibits A-F, were sent by the method indicated:

To the Office of the Secretary:
By eFAP

To the Appellant:
By email (greenwoodl@sec.gov, schallj@sec.gov, krishnamurthyp@sec.gov)

/s/ Noam Greenspan
Noam Greenspan, Counsel for Respondent