

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 665/February 10, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-13847

In the Matter of :
: :
MORGAN ASSET MANAGEMENT, INC., :
MORGAN KEEGAN & COMPANY, INC., :
JAMES C. KELSOE, JR., and :
JOSEPH THOMPSON WELLER, CPA :
: :

PROTECTIVE ORDER

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on April 7, 2010. On May 28, 2010, a subpoena was issued requiring, among other things, the production of certain documents by the Commission's Office of Compliance Inspection and Examination (OCIE) that it had obtained from ten third parties. On June 16, 2010, OCIE filed a motion to quash the subpoena, which, with regard to the third-party documents, the assigned administrative law judge denied on July 20, 2010, while issuing a broad protective order as relates to the third-party documents. On August 18, 2010, OCIE petitioned the Commission for interlocutory review of the July 20 Order; and, on December 8, 2010, the Commission denied the review and granted OCIE sixty days to produce the subpoenaed documents and sixty days for Respondents to review them.

The December 8 Order required the parties and administrative law judge "to delineate an expanded and more detailed order for confidential treatment of any third-party documents" than that provided by the July 20 protective order provision. The Commission required the expanded order to set forth authorized use and users of the documents and appropriate control mechanisms. Further, OCIE was to be provided "sufficient opportunity to give appropriate notice to the subject [third parties . . .] before disclosure."

At a prehearing conference on January 13, 2011, counsel for OCIE represented that it was in contact with the affected third parties with regard to the documents subpoenaed and was working with these parties on language for a proposed protective order to meet the Commission's December 8 requirements. On February 3, 2011, OCIE counsel submitted a Motion for Entry of a Protective Order (Motion) and attached its proposed order as Exhibit 1, to which Respondents noted their opposition. Respondents had submitted an alternative proposed order, which OCIE counsel included as Exhibit 2 to its Motion. After review of comments from the parties, including some of the affected third parties, that were received during and following a February 8, 2011, prehearing conference, it was determined that a review procedure for the third-party documents would commence under protective order.

PROTECTIVE ORDER

To expedite the identification of documents that may be relevant to Respondents' defense and to ensure appropriate protections pursuant to 17 C.F.R. § 201.322, the following "control mechanisms" are ORDERED:

1. As used in this Protective Order, "Third-Party Documents" refers to documents originally produced to OCIE by entities other than Respondents. It includes all written, recorded, electronic, or graphic materials from third parties identified by OCIE as responsive to Requests 2 and 4 of the May 28, 2010, subpoena served on it and are contained in a total of nine boxes.

2. All Third-Party Documents shall be treated as "Confidential," regardless of whether the documents are so marked or designated. Accordingly, any person subject to this Order who views the Third-Party Documents shall not disclose the information contained therein to anyone else except as expressly permitted hereunder. The information contained in the Third-Party Documents shall be used solely for Respondents' defense of this proceeding.

3. Commission staff will make the Third-Party Documents available for inspection only to Respondents' outside counsel of record and their support staff ("Reviewing Counsel"), who shall review the documents at the Commission's Regional Office in Atlanta, during regular business hours and in the presence of a designated Commission staff member.

4. All documents must remain in the location within the Atlanta Office designated for review and shall not be removed from this location for any reason. Reviewing Counsel shall not make copies of the Third-Party Documents or transmit in any way the contents of the documents, including to the named parties in this proceeding. Reviewing Counsel may make notes sufficient to identify the documents they reviewed, the general subject matter of such documents, and the reasons why such documents may be relevant to Respondents' defense. Reviewing Counsel may request a separate location in the Atlanta Office from the designated reviewing location for private conversations.

5. Reviewing Counsel shall designate which documents, if any, are necessary for the presentation of Respondents' defense and are to be offered in evidence. Reviewing counsel shall designate documents in a manner that includes identification as to which third party originally produced the documents. The designated documents and any notes taken by Reviewing Counsel pursuant to Paragraph 4 shall be placed Under Seal by OCIE and made available to the Administrative Law Judge for *in camera* review, at which time a determination will be made as to whether the designated documents meet the evidentiary requirements of 17 C.F.R. §§ 201.320, .326. A second Protective Order shall be issued for documents meeting these requirements for use in connection with the hearing in this proceeding.

SO ORDERED.

Robert G. Mahony
Administrative Law Judge