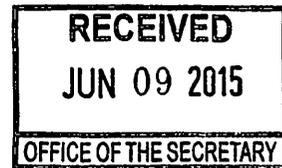


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-15215

In the Matter of

JAMES S. TAGLIAFERRI,

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR A  
PROTECTIVE ORDER  
AND MEMORANDUM OF LAW IN SUPPORT**

The Division of Enforcement ("Division"), pursuant to Commission Rule of Practice 322, 17 C.F.R. § 201.322, respectfully submits this Motion for a Protective Order, to ensure the confidentiality of certain highly sensitive, personal and confidential information contained in the documents produced in its investigative file to Respondent. The Division also respectfully submits the following Memorandum of Law in Support of its Motion.

**MEMORANDUM OF LAW IN SUPPORT**

The Division's investigative file contains financial and personally identifying information of numerous third parties, primarily former advisory clients of Respondent, James Tagliaferri. The Division seeks a Protective Order restricting Respondent's use of such information to this proceeding and the parallel criminal action now pending against him, United States v. Tagliaferri, 13 Cr. 115 (RA)(S.D.N.Y.) (the "Criminal Action"), and an Order directing both parties to redact such confidential information from public filings.

## BACKGROUND

The Order Instituting Proceedings in this matter was instituted on February 21, 2013. The indictment against Respondent in the Criminal Action was unsealed the same day. (United States Department of Justice's Application to Intervene and Motion to Stay Administrative Proceedings, dated March 8, 2013, at 1-2.) The indictment charged Respondent with criminal violations of the Securities Exchange Act of 1934 (the "Exchange Act") and the Investment Advisers Act of 1940 (the "Advisers Act"), among other violations, on the basis of much the same conduct as alleged in the OIP. (Id. at 2.) On March 11, 2013, the Court granted the motion of the United States Attorney's Office (the "USAO") for a stay of these proceedings pending resolution of the Criminal Action. (Order, dated March 11, 2013.)

On July 24, 2014, the jury in the Criminal Action returned a verdict finding Respondent guilty on twelve counts, including one count of investment adviser fraud and one count of securities fraud. On February 13, 2015, the Criminal Action court sentenced Respondent to 60 months in prison, but delayed the entry of a restitution order, citing outstanding unresolved issues regarding determination of the proper loss amount. Ultimately, the Criminal Action court set a July 2, 2015 date for the hearing on the restitution issues. (See Division Status Reports, dated September 22, 2014 and May 6, 2015.)

On June 1, 2015, at Respondent's request, the Court lifted the stay in this proceeding and ordered the Division to make its investigative file available to Respondent by June 8, 2015. (Order, dated June 1, 2015.) On June 4, 2015, and after receiving an email from Respondent requesting the Division to make its files available as quickly as possible, the Division advised Respondent that its investigative file could be reviewed by him beginning on June 5, 2015, at its New York office. Because the file was maintained by the Division in Concordance, and the

Division suspected that Respondent did not have access to Concordance software, the Division arranged for a laptop installed with the Concordance software to be available to Respondent at its offices. (Declaration of Nancy A. Brown, executed June 8, 2015 (“Brown Decl.”), ¶ 3, and Ex. A.)

In its letter offering Respondent the June 5, 2015 date to review the investigative file, the Division also enclosed a proposed confidentiality stipulation and explained that it requested Respondent’s agreement to keep confidential the personal and confidential information of third parties that was included in the production. (Brown Decl. ¶ 5, Ex. A.) The production includes documents reflecting Tagliaferri’s advisory clients’ personally identifiable information, such as Social Security Numbers, addresses and birth dates, as well as other sensitive confidential information relating to the clients’ financial condition, including investments, and bank account and investment account information. (Id. ¶ 5.)

Also in the Division’s production are the exhibits entered in the Criminal Action. When the USAO made those materials available to the Division, and because the exhibits contained similarly confidential and personally identifiable information of Respondents’ clients as is contained in the Division’s investigative file, the USAO obtained the Division’s agreement to withhold such materials from production except “pursuant to order issued by a court or administrative tribunal.” (Brown Decl., Ex. C.)

Later on June 4, 2015, the Respondent sent the Division an email response. In it, he (1) declined the Division’s offer to review its investigative file in the searchable Concordance format and asked that it be produced to him in non-Concordance format on discs; and (2) declined to execute the confidentiality stipulation. (Brown Decl. ¶¶ 4 and 7, Ex. B.) In that email, Respondent contended that he would agree to preserve the confidentiality of personal information, but that he

would be unwilling “to restrict the use of any data I feel may be relevant to the Administrative or criminal proceeding.” (Id.)

## ARGUMENT

While Administrative Hearings are presumptively public, see Rule of Practice 301, 17 C.F.R. § 201.301, the Rules of Practice permit parties to seek Protective Orders to “limit from disclosure to . . . the public documents or testimony that contain confidential information.” Rule of Practice 322(a).<sup>1</sup>

In determining the Motion for Protective Order, the Court should consider whether the “harm resulting from the disclosure would outweigh the benefits of disclosure.” Matter of Dominic A. Alvarez, Admin. Proc. File No. 3-12139, 2006 SEC LEXIS 308, at \*3 (SEC Feb. 6, 2006); accord Matter of Charles L. Hill, Jr., Admin. File No. 3-16383, 2015 SEC LEXIS 1488, at \*8 n.4, 10-11 (holding that “dates of birth, addresses, e-mail addresses, and social security numbers . . . are subject to being protected. The same is true for any person’s banking or brokerage account number.”) In this case, the harm in subjecting this information to public disclosure outweighs any benefit. Revealing confidential financial information of third parties and their personally identifying information would potentially subject them – parties whose only role here is as victims – to the risks of identity theft, among other harms. And no conceivable benefit derives from revealing this information.

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<sup>1</sup> This Court has frequently acknowledged the need to protect confidential information, even without the imposition of a formal protective order, in its prehearing orders. E.g., Matter of Barbara Duka, Admin. Proc. File No. 3-16349, 2015 SEC LEXIS 881, at \*3 (March 4, 2015) (directing parties to “[o]mit [from filings] personal or sensitive information if there is no real need for it”). Cf. Fed. R. Civ. P. 5.2 (requiring litigants to redact certain information from documents that contain an individual’s “social-security number, taxpayer-identification number, or birth date . . . or financial account number”).

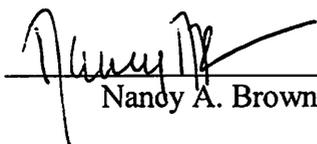
To protect this information, the Division seeks only to impose upon the Respondent an obligation that he maintain the confidentiality of information contained in the Division's investigative file and that he (and the Division) be ordered to redact from public filings any such information.

### CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court enter a protective order in this matter that (1) Orders the Respondent to maintain the confidentiality of third parties' financial and personally identifying information (the "Confidential Information") in the Division's investigative file and restrict his use of such information to this Proceeding and the Criminal Action; and (2) Orders the Division and the Respondent to redact all Confidential Information from any document either one files publicly in this Proceeding.

Dated: June 8, 2015  
New York, New York

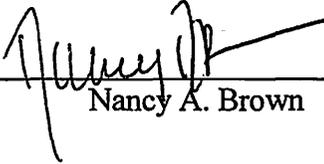
DIVISION OF ENFORCEMENT

By:   
Nancy A. Brown

Securities and Exchange Commission  
New York Regional Office  
200 Vesey Street, Suite 400  
New York, New York 10281

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Motion for a Protective Order by sending a copy of it to Respondent this 8th day of June by email to [REDACTED] and [REDACTED].

  
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Nancy A. Brown