

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 13, 2008

In the Matter of	:	
	:	
MICHAEL SASSANO,	:	ORDER DENYING REQUEST FOR
DOGAN BARUH,	:	CONFIDENTIAL TREATMENT
ROBERT OKIN, and	:	
R. SCOTT ABRY	:	

On January 30, 2008, I approved approximately forty subpoenas *duces tecum* at the request of Respondent Michael Sassano (Sassano). The subpoenas were addressed to non-parties and had a return date of February 15, 2008. Sassano has been negotiating the scope of the subpoenas with the non-parties, and, in some instances, he has agreed to postpone the return date. During the course of these negotiations, five of these non-parties indicated to Sassano that they would not produce some, or all, of their responsive documents without a protective order or a confidentiality agreement.¹ Sassano, the other three Respondents, and two of these non-parties have agreed to the terms of a proposed protective order. The proposed protective order provides a broad definition of what should be deemed “confidential information.” It would restrict the parties to using such “confidential information” solely for purposes of this administrative proceeding. The Division of Enforcement (Division) has not agreed to the terms of the proposed protective order.²

By motion dated March 12, 2008, Sassano seeks my approval of the proposed protective order. In the alternative, Sassano requests me to issue an order directing the five non-party subpoena recipients to produce the responsive documents that they have not yet produced.

Under Rule 322(a) of the Rules of Practice of the Securities and Exchange Commission (Commission), a party or any person who is the owner, subject, or creator of a document subject to subpoena may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents that contain confidential information. Under Rule 322(b) of the Commission’s Rules of Practice, a motion for a protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

¹ Sassano identifies the five non-parties as Delaware Management Holdings Company, Inc.; Eclipse Funds, Inc.; Excelsior Funds, Inc.; Franklin Templeton, and J. & W. Seligman & Co., Inc.

² The Division requested that I order Sassano to share with it any documents produced by the subpoena recipients (Letter from David Stoelting, dated Feb. 12, 2008, at 10). Sassano did not object to the Division’s request, and I granted it (Order of Feb. 19, 2008; Prehearing Conference of Mar. 4, 2008, at 22).

I decline to enter the proposed protective order. First, Sassano's motion offers virtually no details about the grounds for the proposed confidential treatment, or the quantity of documents involved. Some of the proposed categories of documents that would be accorded confidential treatment are, at first glance, unexceptional: *i.e.*, trade secrets, intellectual property, and personal financial information. However, the other proposed categories of documents that would be accorded confidential treatment are quite broad: *i.e.*, "other confidential research, development, or commercial information" and "any documents or information which otherwise have a compelling need for confidentiality and are entitled to protection under the applicable law."

Second, the proposed protective order does not distinguish the confidential treatment that would be accorded documents produced in response to the subpoenas from the much narrower class of responsive documents that may ultimately be offered as hearing exhibits. Moreover, the proposed protective order would arguably grant confidential treatment to documents produced by all forty subpoena recipients, not merely the five subpoena recipients that are requesting a protective order or the two subpoena recipients that have endorsed the wording of the draft protective order.

Third, I am unwilling to issue an order that restricts the Division's use of the documents produced or needlessly embroils the Division in collateral litigation about what is, or should be, "confidential information" under the broad definition provided. Perhaps, upon reviewing the responsive documents, the Division may determine that: (a) the non-parties have been less than forthcoming in responding to the Division's own earlier subpoena requests; or (b) the non-parties have presented information that suggests possible violations of law which warrant further scrutiny; or (c) the non-parties' documents should be shared with other federal or state law enforcement authorities. I will not grant these non-parties a "blank check" that impedes the Division in its law enforcement responsibilities.

This order is not intended, and should not be viewed, as an invitation for Sassano and the non-parties to rewrite and resubmit another proposed confidentiality order. Sassano and the non-parties have had four weeks since the original return date of the subpoenas to resolve their differences. No more time will be granted to produce responsive documents. If any documents of concern to the non-parties eventually appear on Respondents' proposed exhibit lists, the non-parties are free to seek relief under Rule 322(a) at that time.

Pursuant to Rule 322(b) of the Commission's Rules of Practice, Sassano's motion for a protective order is denied. The five non-party subpoena recipients identified in Sassano's motion shall produce all responsive documents to Sassano by 10:00 a.m., E.D.T., on March 17, 2008.

SO ORDERED.



James T. Kelly
Administrative Law Judge