

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

U.S. BANK NATIONAL ASSOCIATION (as Trustee,
Securities Administrator, Paying Agent, and/or Calculation
Agent under various Pooling and Servicing Agreements),

Petitioner,

For Judicial Instructions Under CPLR Article 77.

Index No. 656028/2021

Justice Andrew Borrok

IAS Part 53

**HBK MASTER FUND L.P.'S MEMORANDUM OF LAW
IN SUPPORT OF ITS ORDER TO SHOW CAUSE**

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Respondent HBK Master Fund L.P. (“HBK”) respectfully submits this memorandum of law in support of its motion, brought by order to show cause, for an order, pursuant to [22 N.Y.C.R.R. § 216.1](#) and this Court’s Practices and Procedures, permanently sealing NYSCEF No. 270 in its entirety and directing the Olifant Funds, Reliance Parties, and Taconic Funds (collectively, “Olifant”) to publicly file redacted copies of documents filed as NYSCEF Nos. 268 and 278, which refer to NYSCEF No. 270, while providing unredacted copies to the Court.

PRELIMINARY STATEMENT

By this motion, HBK respectfully requests that this Court permanently seal a single exhibit produced in discovery and filed as NYSCEF No. 270 by Olifant in connection with Olifant’s merits brief, and direct Olifant to file redacted versions of Olifant’s brief and supporting expert report that refer to the exhibit at issue while providing unredacted copies to the Court.¹

Good cause for sealing exists. The exhibit is a data file (“CDI File”) generated by software used and created by non-party Intex Solutions, Inc. (“Intex”). HBK received the CDI File from Bear, Stearns & Co., Inc. (“Bear Stearns”), the dealer for the Trusts at issue in this case (the “Trusts”), along with other marketing materials when the Trusts were first created. It contains Intex’s confidential, proprietary, and competitively sensitive software code and model used for analyzing RMBS. The CDI File is not public. It was distributed only to Bear Stearns’ clients, and was intended for the sole and exclusive use of paying licensees like HBK. The public disclosure of the CDI File would reveal Intex’s proprietary information and could cause unnecessary harm to Intex’s business. There is therefore good cause to shield the CDI File, as

¹ Copies of Olifant’s brief and expert report with HBK’s proposed redactions are attached as Exhibits B and C to the Affirmation of Uri Itkin dated July 21, 2023.

well as references to it in Olifant’s brief and supporting expert report, from public view.

LEGAL STANDARD

The Court may direct the sealing of court records “upon a written finding of good cause.” [22 N.Y.C.R.R. § 216.1\(a\)](#). In making that determination, the Court should “weigh[] the interests of the public,” [Mancheski v. Gabelli Grp. Cap. Partners](#), 39 A.D.3d 499, 502 (2d Dept. 2007), and assess whether the public has a legitimate interest in the matter beyond “mere curiosity,” [Dawson v. White & Case](#), 184 A.D.2d 246, 247 (1st Dept. 1992). Where, as here, “the relevant facts and circumstances of the particular case” warrant, the Court should exercise its discretion to grant a motion to seal. [Matter of Crain Commc’ns v. Hughes](#), 135 A.D.2d 351, 351 (1st Dept. 1987), *aff’d*, [74 N.Y.2d 626](#) (1989).

ARGUMENT

The Court should grant HBK’s request to seal the CDI File and redact references to it in Olifant’s brief and supporting expert report because the CDI File contains a non-party’s confidential, proprietary, and commercially sensitive information.

“In the business context, courts permit records to be sealed when trade secrets are involved or when disclosure of information contained in documents ‘could threaten a business’s competitive advantage.’” [Linkable Networks, Inc. v. Mastercard Inc.](#), 75 Misc.3d 1231(A), at *2 (Sup. Ct., N.Y. County Aug. 3, 2022) (quoting [Mosallem v. Berenson](#), 76 A.D.3d 345, 350-51 (1st Dept. 2010)); *see also* [In re Twentieth Century Fox Film Corp.](#), 190 A.D.2d 483, 488 (1st Dept. 1993) (good cause exists to seal when public disclosure will create competitive harm)). Justification for sealing is especially compelling when “disclosure could impinge on the privacy rights of third parties who clearly are not litigants.” [Mancheski](#), 39 A.D.3d at 502-03; *see also* [McGuigan v. Gendell](#), No. 650294/2021, 2022 WL 16571275, at *1 (Sup. Ct., N.Y. County Oct.

[27, 2022](#)) (granting motion to seal because documents “contain[ed] sensitive, proprietary, and confidential information of a third-party.”).

In *Navatar Group, Inc. v. Seale & Associates., Inc.*, the Court found good cause for sealing “proprietary models” created by a non-party, West Publishing Corporation (“West”), that were “not publicly available but [are] instead licensed for private use only to . . . subscribers” of PeerMonitor, West’s “proprietary product.” [No. 653643/2018, 2022 WL 4398690, at *3 \(Sup. Ct., N.Y. County Sept. 20, 2022\)](#). The Court explained that “West makes the information in its PeerMonitor database available only by paid subscription and provides subscribers with a limited license to use the PeerMonitor data only for internal purposes,” and that “[d]efense counsel pays for the PeerMonitor service and is granted a limited license to use the service.” *Id.* The Court found that, in those circumstances, sealing was “warranted to protect the confidentiality of West’s proprietary models and its ability to profit from the ability to license them.” [Id. at *3-4](#). It further found that “[t]hese interests outweigh the limited interest the public may have in free access to PeerMonitor data.” *Id.*

Navatar is on point here. Intex, a non-party, provides cashflow models, analytics, and software for structured products, like the residential mortgage-backed securities at issue in this case. Just like in *Navatar*, HBK pays Intex, a non-party, for a limited license to use its proprietary software. Intex Affidavit ¶ 3. The CDI File is a model created by Intex’s proprietary modeling language and designed for use with Intex’s proprietary software. *Id.* ¶ 7. Bear Stearns provided it to HBK and certain of Bear Stearns’ other clients when it first marketed the Trusts’ certificates to investors. *Id.* ¶ 6. The CDI File and files like it are designed for the sole and exclusive use of licensees of Intex’s software, like HBK, and are not publicly available. *Id.* ¶ 5. The public disclosure of the CDI File and its contents would reveal Intex’s proprietary software

code and model, and thus could significantly harm Intex's competitive advantage and business.

Id. ¶ 7.

As in *Navatar*, the CDI File contains Intex's highly confidential, competitively sensitive and proprietary intellectual property, which is "not publicly available" and is instead designed only for use by paying licensees of Intex's software. [2022 WL 4398690, at *3](#). And as in

Navatar, public disclosure of the CDI File would harm "the confidentiality of [Intex's] proprietary models and its ability to profit from the ability to license them." [Id. at *3-4](#).

Additionally, since Intex's proprietary information itself is not at issue in this case, the public has little, if any, right or interest to "free access to" the CDI Files, the information contained therein, or discussions of it in Olifant's brief and expert report. [Id.](#) Intex's interests in protecting its proprietary information from the public eye thus plainly "outweigh" any public interest to free access. [Id.](#)

CONCLUSION

For all of these reasons, HBK respectfully requests that the Court grant its motion and enter an order: (1) directing the Clerk of the Court to permanently seal NYSCEF No. 270, and (2) directing Olifant to publicly file redacted versions of NYSCEF Nos. 268 and 278, while providing unredacted versions to the Court.

Dated: July 28, 2023
New York, New York

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with this Court’s 7,000-word limit because it contains 1,144 words (using the “word count” function of Microsoft Word), excluding the parts of the brief exempted by Rule 17 of the New York Commercial Division Rules.

Dated: July 28, 2023
New York, New York

/s/ Uri A. Itkin
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