

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 S. Borrok

IAS Part 53

~~PROPOSED~~ ORDER TO SHOW
CAUSE FOR SEALING ORDERMotion Sequence No. 013

Upon reviewing the Affirmation of Uri Itkin in Support of HBK Master Fund L.P.'s ("HBK") Order to Show Cause, dated July 28, 2023, the Affidavit of Intex Solutions, Inc. in support thereof, dated July 20, 2023, and the accompanying Memorandum of Law in support thereof, and sufficient cause being alleged, it is hereby:


ORDERED that the parties who have appeared in the above-captioned case, or their attorneys, show cause before this Court, at the courthouse located at 60 Centre Street, New York, New York 10007, Courtroom 238, on September 27, 2023, at 2 o'clock or as soon thereafter as counsel may be heard, why an order should not be entered, pursuant to 22 N.Y.C.R.R. § 216.1, permanently sealing Dkt. 270 in its entirety and directing Respondents Olifant Fund, Ltd., FFI Fund Ltd., FYI Ltd., Reliance Standard Life Insurance Company, Safety National Casualty Corporation, Stephen Finkelstein, NAV LLC, Taconic Master Fund 1.5 L.P., Taconic Opportunity Master Fund LP, and Park Royal II LLC to file redacted versions of Dkts. 268 and 278 that reflect HBK's proposed redactions; and it is further

ORDERED that, pending the outcome of the hearing on this Order to Show Cause, Dkts. 268, 270 and 278, which were filed under provisional seal, shall remain sealed; and it is further

ORDERED that answering papers, if any, to this Motion shall be filed by September 13, 2023;

ORDERED that service of a copy of this Order to Show Cause, and all supporting papers upon which it is based, through the NYSCEF System on all Parties and their respective counsel, on or before August 17, 2023, shall be deemed good and sufficient service.

Dated: August 16, 2023



HON. ANDREW BORROK, J.S.C.

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

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Petitioner,

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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,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Uri A. Itkin
Uri A. Itkin
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New York, NY 10036

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Attorneys for HBK Master Fund L.P.

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
Uri A. Itkin

SUPREME COURT OF THE STATE OF NEW YORK
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Justice Andrew Borrok

IAS Part 53

**AFFIRMATION OF URI ITKIN IN SUPPORT OF
HBK MASTER FUND L.P.'S ORDER TO SHOW CAUSE**

I, Uri A. Itkin, affirm as follows:

1. I am an attorney duly admitted to practice before the Courts of the State of New York. I am a partner at the law firm of Akin Gump Strauss Hauer & Feld LLP, counsel for respondent HBK Master Fund L.P. (“HBK”). I respectfully submit this Affirmation in further support of HBK’s Order to Show Cause filed herewith.

2. Attached hereto as Exhibit A is a true and correct copy of the Affidavit of Intex Solutions, Inc. in Support of HBK’s Order to Show Cause, dated July 20, 2023.

3. Attached hereto as Exhibit B is a true and correct copy of the *Responsive Merits Brief of Respondents Olifant Funds, Reliance Parties, and Taconic Funds*, dated June 21, 2023 (Dkt. No. 268), with proposed redactions.

4. Attached hereto as Exhibit C is a true and correct copy of the *Rebuttal Affidavit of Dean Smith*, dated June 21, 2023 (Dkt. No. 278), with proposed redactions.

5. Pursuant to CPLR § 2217(b), no prior application for the relief requested herein has been made in this action.

I affirm under the penalty of perjury, pursuant to CPLR § 2106, that the foregoing is true
and correct to the best of my knowledge and belief.

Dated: July 28, 2023
New York, New York

/s/ Uri A. Itkin
Uri A. Itkin

CERTIFICATE OF COMPLIANCE

This affirmation complies with this Court’s 7,000-word limit because it contains 208 words (using the “word count” function of Microsoft Word), excluding the parts of the affirmation exempted by Rule 17 of the New York Commercial Division Rules.

Dated: July 28, 2023
New York, New York

/s/ Uri A. Itkin
Uri A. Itkin

EXHIBIT A

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

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Justice Andrew S. Borrok

IAS Part 53

**AFFIDAVIT OF INTEX SOLUTIONS, INC. IN SUPPORT OF
HBK MASTER FUND, L.P.'S ORDER TO SHOW CAUSE**

George Jigarjian, being duly sworn, deposes and says:

1. I am the President of Intex Solutions, Inc. (“Intex”). I submit this affidavit in support of HBK Master Fund, L.P.’s (“HBK”) Order to Show Cause to permanently seal NYSCEF No. 270 and file redacted copies of NYSCEF Nos. 268 and 278, which refer to NYSCEF No. 270. I make the statements in this affidavit based upon my personal knowledge and belief, including based on discussions with other personnel at Intex.

2. Intex is a commercial software provider of structured fixed-income cashflow models and related analytical software. Intex software is used by investors and others to forecast future cashflows for Residential Mortgage-Backed Security (“RMBS”) certificates and other asset-backed securities. It allows users to apply various scenarios based on variables including default and prepayment rates to Intex’s cashflows models and software.

3. Intex’s proprietary software is not available to the general public. Those who wish to use Intex’s software may only obtain access to it by licensing it from Intex and paying an initial licensing fee and monthly licensing fees.

4. When a RMBS trust is first created and marketed, the trust's dealer may use its licensed Intex software to create data files, called "CDI files," to be sent to potential investors who also have a license to use the Intex software, along with other marketing materials. The CDI files reflect the trust's payment waterfall in order to generate forecasted cashflows to the various certificate classes in that trust. Using the CDI files, Intex software can generate projected cashflows for each certificate class based on various assumptions inputted by the potential investor.

5. CDI files contain Intex's proprietary modeling language, are designed for use with Intex's proprietary software, and are intended for the sole and exclusive use of paying licensees of Intex's software. Intex does not make its CDI files available to the general public.

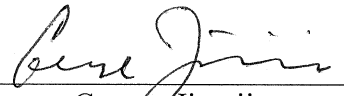
6. Intex has been informed that, when certain trusts at issue in this case first came to market, HBK received marketing materials from Bear, Stearns & Co. Inc., the dealer for those trusts, and that those materials included CDI files. Intex has also been informed that another party in this case filed one of the CDI files with the Court as an exhibit to its merits briefing. *See* NYSCEF No. 270.

7. Public disclosure of this CDI file and its contents would reveal Intex's proprietary software code and models to the public eye, which could significantly harm Intex's competitive advantage and business. Intex has invested decades of man hours developing its proprietary modeling language and this CDI file contains that Intex proprietary modeling language. I therefore respectfully request, on behalf of Intex, that the Court permanently seal the CDI file and any substantive discussions of it or its contents.

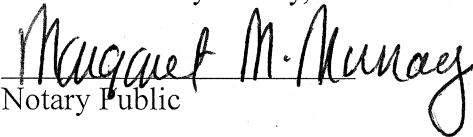
8. I reserve the right to amend or supplement this Affidavit.

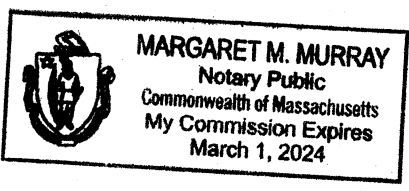
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: July 20, 2023


George Jigarjian
President
Intex Solutions, Inc.

Sworn to before me
on this 20th day of July, 2023


Notary Public



CERTIFICATE OF COMPLIANCE

This affidavit complies with this Court’s 7,000-word limit because it contains 493 words (using the “word count” function of Microsoft Word), excluding the parts of the affidavit exempted by Rule 17 of the New York Commercial Division Rules.

Dated: July 28, 2023
New York, New York

/s/ Uri A. Itkin
Uri A. Itkin