

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

R.J. ZAYED, In His Capacity)	CIVIL ACTION
As Court-Appointed Receiver)	
For The Oxford Global Partners, LLC,)	File No.: 13-cv-00232 (DSD-JSM)
Universal Brokerage FX, and Other)	
Receiver Entities,)	
)	
Plaintiff,)	
v.)	
)	
ASSOCIATED BANK, N.A.,)	
)	
Defendant.)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S MOTION
TO DE-DESIGNATE DOCUMENTS AND UNSEAL COMPLAINT**

The Court-appointed Receiver, R.J. Zayed (“Receiver”), respectfully moves for this Court to de-designate certain documents subject to a Stipulated Protective Order and unseal the redacted Complaint filed in this action so that the entire Complaint and exhibits incorporated thereto may be made available to the public and the many interested parties in this litigation—specifically, the over 700 investors defrauded by Trevor Cook’s Ponzi scheme.

The documents designated as “Confidential” pursuant to the Stipulated Protective Order are not entitled to protection because they do not contain any “confidential, proprietary, or commercially or personally sensitive information that requires protection”—at most, the documents contain or reference Receiver account information of which the Receiver welcomes full and open disclosure subject to any redactions to

personal account details. Furthermore, overriding public policy suggests that the documents at issue herein should be made publicly available.

For these reasons, the Court should grant Plaintiff's Motion to De-Designate Documents and Unseal Complaint.

I. Background of the Dispute

Prior to filing the above-captioned action, the Receiver obtained third-party discovery from Associated Bank for matters in which the Receiver was attempting to claw back illegal transfers made by the Ponzi scheme and for other due diligence materials of which he is entitled pursuant to his Orders of appointment. *See SEC v. Trevor G. Cook, et al.*, No. 09-cv-3333, Doc. 98, §I.H. (D. Minn. Dec. 11, 2009); *SEC v. Trevor G. Cook, et al.*, No. 09-cv-3332, Doc. 96, §I.H. (D. Minn. Dec. 11, 2009).

Prior to Associated Bank's production, a Protective Order was entered covering Associated Bank's "confidential, proprietary, or commercially or personally sensitive" information. [Vogt Dec. Ex. A ¶ 3]. Associated Bank then improperly blanketed every single document it produced (over 2,000) with the confidential designation, including clearly non-confidential material such as website printouts and other public documentation. *See Citizens First Nat'l Bank v. Cincinnati Ins. Co.*, 178 F.3d 943, 945-46 (7th Cir. 1999) (commenting on how protective orders may be abused by litigants).

Prior to the filing of this motion, counsel for Plaintiff initiated a meet-and-confer pursuant to Local Rule 7.1(a). [Vogt Dec. ¶ 3] The parties were able to reach agreement on removing the confidential designation from some documents. [Vogt Dec. Ex. B].

However, Associated Bank still disputes the unsealing of twenty documents and there are a few exhibits on which Associated Bank has said it “takes no position.” [*Id.*] Pursuant to the Protective Order, and out of a concern to avoid any accusations of disclosing confidential information, Plaintiff’s have avoided discussing the documents in detail herein. However, Plaintiffs have submitted these specific documents to the Court *in camera* and under seal, and welcome the opportunity to discuss in detail their improper designation as “Confidential” at the hearing.

II. The Disputed Documents Are Not Confidential

When the Protective Order was entered, it was not intended to cover every document produced by Associated Bank. By agreement, it only protects materials that contain Associated Bank’s “confidential, proprietary, or commercially or personally sensitive” information. [Vogt Dec. Ex. A ¶ 3]. Moreover, the Protective Order further provides that a party may file a motion to modify the protection afforded thereunder pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. [*Id.* ¶ 13(d)].

As set forth in the table below, and as shown in the documents themselves, the documents Associated Bank designated as confidential do not satisfy the agreed definition of “Confidential Information.” No protectable Associated Bank information is contained in the documents. Instead, the disputed documents concern information about the Receiver’s accounts and entities—that is, Receivership specific account data of which he welcomes full and open disclosure.

Those documents which Defendant Associated Bank opposes unsealing are summarized as follows:

Document No.	Complaint Exhibit #
ABCCVL000977	7
ABCCVL000976	8
ABCCVL000978	8
ABCCVL000979	23
ABCCVL000978	24
ABCCVL000420	9
ABCCVL000118	9
ABCCVL000059	10
ABCCVL000092	10
ABCCVL000019	33
ABCCVL000392	19
ABCCVL000394- ABCCVL000395	21
ABCCVL000223	27
ABCCVL000222	29
ABCCVL000225	30
ABCCVL000006	31
ABCCVL001625	35
ABCCVL001906	
ABCCVL001082	36

Good cause exists for unsealing the above documents. The Protective Order covers Associated Bank's confidential information. It does not cover information about the Receiver accounts and entities, which accounts for nearly all of the information contained in the above documents. Moreover, to the extent the documents memorialize employee discussions or actions taken by an employee, the discussions and actions still concern Receiver accounts and entities and not Associated Bank confidential information. No "confidential, proprietary, or commercially or personally sensitive information" which would require protection will be disclosed by unsealing these Complaint exhibits.

Furthermore, Associated Bank can demonstrate no trade secret or other confidential research, development, or commercial information in these documents that would jeopardize any business practice. *See* Fed. R. Civ. P. 26(c)(1)(H).

Lastly, the Receiver is an instrument of this Court. As such, he has had a policy of making the information he obtains available to the public, a policy consistent with controlling precedent holding that there is a presumption that court filings should be made public. *Schedin v. Ortho-McNeil-Janssen Pharms., Inc.*, No. 08-cv-5743, 2011 U.S. Dist. LEXIS 51185, at *3-5 (D. Minn. May 12, 2011); *see also Citizens First Nat'l Bank*, 178 F.3d at 946 (“Most cases endorse a presumption of public access to discovery materials”) (citing *In re Remington Arms Co.*, 952 F.2d 1029, 1032 (8th Cir. 1991)).

Consequently, for the reasons stated, the above documents should be unsealed.¹

III. The Documents on Which Associated Bank Has Taken No Position Also Are Not Confidential

Associated Bank has also taken the position that it takes “no position” as to the unsealing of Exhibits 6, 16, 34² and 37.³ Yet, by taking this position, Associated Bank has not agreed to de-designate and unseal Exhibits 6, 16, 34 and 37. As for Exhibit 16, it is a chart summarizing information obtained from Associated Bank yet the document

¹ With respect to the redactions made to the documents, any redactions were made by the Receiver to protect, e.g., individual account numbers. Consequently, any unsealed document will retain the redactions made thereto.

² For document AB9559 there is no opposition to unsealing and as to AB9545-9558 Associated Bank takes no position.

³ There is no opposition from Associated Bank to unsealing some documents in this Exhibit, while Associated Bank takes no position on others. [*See* Vogt Dec. Ex. B, at 2].

itself was not produced by Associated Bank. Thus, for all practical purposes, the parties agree that the exhibits should be unsealed; but in order for this to occur, an order from the Court is needed to modify the Protective Order. [Vogt Dec. Ex. A, ¶ 13(d)]. As a result, the Receiver respectfully requests that Exhibits 6, 16, 34 and 37 be unsealed as well.

IV. Conclusion

For the above stated reasons, the Receiver respectfully moves this Court for an order unsealing the Complaint in this action, in its entirety, and that all documents subject to the Stipulated Protective Order described in the Complaint and incorporated as exhibits to the Complaint, be unsealed so that an un-redacted Complaint with all incorporated exhibits may be viewed by the general public and all interested parties to this action.

Dated: February 21, 2013

Respectfully submitted,

s/ Brian W. Hayes

R.J. Zayed (MN Bar No. 309,849)

Tara C. Norgard (MN Bar No. 307,683)

Brian W. Hayes (MN Bar No. 294,585)

Russell J. Rigby (MN Bar No. 323,652)

Brenton A. Elswick (MN Bar No. 388,816)

Carlson, Caspers, Vandenburg, Lindquist
& Schuman, P.A.

225 S. Sixth Street, Suite 4200

Minneapolis, MN 55402

Telephone: (612) 436-9600

Facsimile: (612) 436-9605

Email: rzayed@carlsoncaspers.com

SPECIAL LITIGATION COUNSEL TO THE RECEIVER:

s/ Keith A. Vogt _____

Keith A. Vogt (*pro hac vice*)

IL Bar No. 6207971

Stadheim & Grear Ltd.

400 N. Michigan Avenue, Suite 2200

Chicago, IL 60611

Telephone: (312) 755-4400

Facsimile: (312) 755-4408

Email: vogt@stadheimgear.com

*Attorneys for R.J. ZAYED, In His Capacity As
Court-Appointed Receiver for The Oxford
Global Partners, LLC, Universal Brokerage FX,
and Other Receiver Entities*