

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

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

Plaintiff,

vs.

ASSOCIATED BANK, N.A.,

Defendant.

Case No. 13-cv-00232
(DSD-JSM)

PROTECTIVE ORDER

Plaintiff R.J. Zayed, in his capacity as Court-appointed receiver (the “Receiver”) and Defendant Associated Bank, N.A. (“Associated Bank”), stipulate and move the Court for entry of this Protective Order pursuant to Fed. R. Civ. P. 26(c) concerning the treatment of Confidential Information produced in this litigation, **and as amended by the Court in paragraph 9**, as follows:

1. Definitions

- a. Written Assurance: A Written Assurance with this Protective Order, and acknowledgement and agreement to be bound by it, in the form set forth in “Exhibit A,” which is attached hereto.
- b. Confidential Information: Discovery Material that qualifies for protection under Fed. R. Civ. P. 26(c)(1)(G) or other applicable law. For the avoidance of doubt, the Parties agree that information related to employee personnel files shall be Confidential Information but retain the right to challenge the designation as set forth below. The party receiving designated Confidential Information shall treat it as proprietary information and shall

not use or disclose the information except for the purposes set forth in this Order or by such orders as may be issued by the Court during the course of this litigation.

- c. Designating Party: A party or non-party who designates Discovery Material as Confidential Information.
- d. Discovery Material: All information, regardless of medium or manner generated, stored, or maintained (including among other things, electronically stored information, testimony, transcripts, or tangible things), that are produced in, or created for the purpose of, disclosures or responses to discovery in this action.
- e. Expert: A person who is not a current employee of a party and has been retained by a party or counsel to serve as an expert witness or as a consultant in this action, including without limitation a professional jury or trial consultant retained in connection with this action.
- f. Legend: The designation affixed to or appearing on Protected Materials (*i.e.*, "CONFIDENTIAL").
- g. Party: Any party to this action, including all of its officers, directors, and employees.
- h. Protected Material: Any Discovery Material that is or has been designated as Confidential Information by a Designating Party.
- i. Producing Party: A party or non-party that produces Discovery Material in this litigation.

- j. Receiving Party: A party or non-party that receives Discovery Material from a Producing Party or indirectly through disclosure or discovery in this litigation.
 - k. Vendors: Persons or entities other than outside counsel that provide litigation support services (e.g., deposition stenography; photocopying; videotaping; preparing exhibits or demonstratives; data management including organizing, storing, or retrieving data in any form or medium; etc.), together with their employees and subcontractors.
- 2. Duration: All obligations and duties arising under this Protective Order and under any Written Assurance executed pursuant to this Order shall survive the termination of this litigation unless the Designating Party agrees otherwise in writing or the Court otherwise orders.
- 3. Designating Protected Material
 - a. Exercise of Restraint and Care: Each Producing Party that designates information for protection under this Order shall limit any such designation to information that qualifies for protection under this Order. The Producing Party shall use the CONFIDENTIAL designation with precision, such that only those specific pages containing Confidential Information shall be so marked. For example, a document containing Confidential Information shall not be designated in its entirety unless each and every page of such document in fact contains Confidential Information. However, all pages of the following categories of documents may be stamped CONFIDENTIAL: employee personnel files and performance reviews. If it comes to a Pro-

ducing Party's attention that information it has designated for protection does not qualify for protection, the Producing Party shall promptly notify all other parties that it is correcting the mistaken designation.

- b. Manner and Timing: Except as otherwise provided in this Order or as otherwise stipulated by the parties or ordered by the Court, Discovery Material that qualifies for protection under this Order must be clearly designated as such before it is disclosed or produced. Designation requires the following:

- i. For information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings, which are governed by Section 3(b)(ii)), the Producing Party must affix the Legend (*i.e.*, "CONFIDENTIAL") on each page that contains Protected Material. A party or non-party that makes Discovery Material available for inspection need not designate them for protection until after the inspecting party has indicated which documents or other materials it would like copied or produced. During the inspection and before the designation, all Discovery Material made available for inspection shall be deemed "Confidential" information unless otherwise designated at the time of inspection. After the inspecting party has identified the documents or other materials it wants copied and produced, the Producing Party must determine the extent to which the requested materials contain information that qualifies for protection under this Order, and before production, must affix the appro-

appropriate Legend on each page of any document that contains Protected Material.

- ii. For testimony given in deposition, all such testimony shall initially be deemed Confidential Information. Any party shall have thirty (30) days after the court reporter issues the final transcript to identify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within thirty (30) days shall remain covered by the provisions of this Order.
- iii. For testimony given in other pretrial or trial proceedings, any party must identify on the record, before the close of the hearing or other proceeding, all protected testimony and the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the party may invoke on the record a right to have up to thirty (30) days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within thirty (30) days shall be covered by the provisions of this Order.
- iv. For information produced in some form other than documentary evidence, the Producing Party must affix the Legend in a prominent place on the exterior of the item, or the container or containers in

which the item is stored. If only portions of the item warrant protection, the Producing Party shall identify the protected portions with the appropriate Legend or with a cover letter explaining the protected portions with specificity.

- v. To the extent that information is produced in a form rendering it impractical to label, the Producing Party may designate such material consistent with this Protective Order, by cover letter specifically identifying the Protected Material therein. For purposes of clarity, where the Producing Party seeks to designate Protected Material in electronic documents, such as email, Word documents, PDF, or any other form that can be rendered in hard copy, it is the responsibility of the Producing Party to label the protected portions with the appropriate Legend.
 - vi. To the extent that any Receiving Party or counsel for the Receiving Party creates, develops, or otherwise establishes or maintains for review on any electronic system Discovery Material designated "Confidential," that party and/or its counsel must take all reasonable steps to ensure that access to such media is restricted to those person who, by the terms of this Order, may have access to Confidential Discovery Material.
- c. Inadvertent Failure to Designate: Subject to the provisions of section 4 below, any Discovery Material produced by a party or non-party that should have been designated Protected Material but is inadvertently pro-

duced without the Legend may be subsequently designated as Protected Material. Any party that seeks to so designate Discovery Material already produced must, within ten (10) business days after discovering the inadvertent production, provide, at its own expense, substitute Discovery Material bearing the appropriate Legend. Upon receipt of the substituted Discovery Material, each Receiving Party must return or destroy all copies of the undesignated Discovery Material and confirm, in a letter to outside counsel for the Producing Party, that it has done so.

- d. Inadvertent Production: The inadvertent production of any privileged materials or other materials exempt from production by any party making production of materials in this proceeding shall not be deemed a waiver or impairment of any claim of privilege or exemption (including under the attorney-client privilege or work-product doctrine) concerning any such materials or the subject matter thereof. Each such party shall have the right to redesignate as privileged or exempt any materials that it produces or has already produced. Such redesignation shall be effective as of the date of such redesignation; provided, however, that the receiving party shall, within five (5) days of such notice, promptly endeavor to return all undesignated copies of such redesignated material. The Producing Party shall maintain any materials redesignated as privileged until the parties resolve any dispute concerning the privileged nature of the materials or the Court rules on any motion to compel. No party shall use or refer to any information contained within any materials at issue unless and until

the producing party agrees or the Court orders that the material is not privileged.

4. Challenging Confidentiality Designations

- a. Right to Challenge: A Receiving Party may, at any time after the production or disclosure of Protected Material, move the Court for an order determining that information designated as Protected Material does not qualify for protection, subject to the provisions below. Neither the designation of information as Protected Material nor the failure of a Receiving Party to object to such designation shall be deemed relevant in determining whether the Discovery Material is appropriate for protection under this Order.
- b. Protection Pending Challenge: In the event a Receiving Party challenges any designation of information as Protected Material, such information shall be deemed covered by this Order, entitled to the level of protection asserted by the Designating Party, unless and until the Court orders otherwise.
- c. Meet and Confer: A Receiving Party that elects to initiate a challenge to a Designating Party's assertion of protection under this Order must do so in writing to the Designating Party. The challenging party must, within ten (10) days of the challenge, explain the basis for its position that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material at issue, to reconsider the circumstances, and, if no change in designation is offered, to explain

the basis for the asserted designation_by either submitting a declaration describing how the information contained in the challenged material meets the standard of Federal Rule of Civil Procedure 26(c)(1)(G), or describing any harm outside of the lawsuit that would result from de-designating the material. Following written notice to a Designating Party of a challenge, the parties shall have ten (10) days from the challenge to attempt an informal resolution of the dispute. If attempts at an informal resolution prove unsuccessful, the challenging party shall then submit its objection to the Court, in accordance with section 4(d) below. If, prior to the expiration of the informal resolution period, the parties agree that the matter cannot be resolved without court intervention, then the challenging party, in its discretion, need not wait the full ten (10) days of the informal resolution period before submitting its objections to the Court.

- d. Judicial Resolution: A Receiving Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion in accordance with the Local Rules that identifies the challenged material and sets forth in detail the basis for the challenge. Such a motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet-and-confer requirements set forth in section 4(c) above.

5. Access To And Use Of Protected Material

- a. Basic Principles: Except as otherwise provided in this Order (e.g., section 5(f), below), or as otherwise stipulated by the parties or ordered by the

Court, a Receiving Party may only use Discovery Material that is disclosed by another party or by a non-party in connection with, and as necessary to, the preparation and trial of this action, any related appellate proceedings, or efforts to mediate or settle this action. Protected Material may be disclosed only to those persons and under the conditions set forth in this Order. When this action has concluded, a Receiving Party must return or destroy all Discovery Material pursuant to the provisions of section 10 below.

- b. Disclosure of Confidential Information: Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose Confidential Information to:
- i. The Court and its personnel under seal;
 - ii. Any mediator(s) engaged by the parties in this action;
 - iii. Court reporters who record depositions or other testimony in this action;
 - iv. Outside and in-house counsel;
 - v. Any named plaintiff in the litigation;
 - vi. Current employees, officers, and directors of the Producing Party;
 - vii. Former employees of the Producing Party at deposition;
 - viii. Third-party consultants and independent experts, as well as employees of such expert or consultant, to the extent it is necessary that the Discovery Material be shown to them for purposes of assisting counsel in this litigation or during any deposition of such ex-

- pert or consultant;
- ix. Any individual identified in the particular Discovery Material as having authored, received, or having knowledge of the information contained in that Discovery Material;
 - x. To the extent not covered by any other paragraph of this section, any actual witness at a deposition in this litigation, and the counsel representing the witness;
 - xi. Vendors to whom it is necessary to disclose Protected Material for the purpose of assisting outside counsel in this action; and
 - xii. Any other person upon the written agreement of the Designating Party that designated Discovery Material as “Confidential” (which agreement may be recorded in a deposition or other transcript), or pursuant to court order after a regularly-noticed motion.
- c. Notice Provision: If any party intends to disclose “Confidential” information to a witness pursuant to paragraph 5(b)(x) above at a deposition, and such witness would not otherwise be entitled to access such “Confidential” information, counsel for the Disclosing Party shall provide written notice to the Producing Party and/or the Designating Party of the intention to so disclose the source of or the specific document containing “Confidential” information at least four (4) business days prior to such intended disclosure. The Producing Party and/or Designating Party shall have the right to designate all portions of the deposition transcript discussing such “Confidential” information as Confidential.

- d. Written Assurance: Before any person described in paragraphs 5(b)(viii) or 5(b)(xi) is given access to “Confidential” information, such persons shall be provided with a copy of this Order and shall execute a Written Assurance. Outside counsel shall retain the original copy of executed Certificates of Compliance and need not disclose who has executed certificates during the course of this action, unless a dispute arises as to the dissemination of Protected Material to persons other than those identified as authorized under this Order.
- e. Use by Designating Party: Nothing in this Order affects or restricts the manner in which information that is designated Protected Material is or may be used by the Designating Party. Such use shall not waive the protections of this Order and shall not entitle other parties or non-parties to use or disclose such information in violation of this Order, except that if the Designating Party uses such materials in a manner that is inconsistent with its treatment as Protected Material (such as disseminating the information publicly), then any Receiving Party wishing to challenge the continued treatment of the information as Protected Material in this action may do so pursuant to section 5, above.
- f. Limitations on Use of Protected Material: Nothing in this Order shall prevent the use or disclosure of Protected Information in a manner otherwise consistent with this Order where:
 - i. The Designating Party withdraws, in writing or on the record of this action, its designation that such information is Protected Material;

- ii. The Designating Party consents, in writing or on the record of this action, to a conditional disclosure or use of Protected Material that differs from the terms of this Order;
 - iii. The Court orders Protected Material released from the restrictions of this Order;
 - iv. Other than materials already produced by Associated Bank, subject to Section 1(h) of this Order, the Protected Material is already possessed by the Receiving Party or has been obtained by proper means from other sources; or
 - v. The Protected Material constitutes the Receiving Party's own information, documents, and exhibits, and such Protected Material was not produced by the Producing Party.
- g. Materials Previously Produced: For the avoidance of doubt, notwithstanding anything else contained in this Order, if Discovery Material was previously produced subject to a Protective Order in another matter and designated "Confidential," such Discovery Material shall be treated as Confidential Information in the context of this action.
- h. Legal Advice: Notwithstanding any other provisions of this Order, it shall not be deemed to prevent counsel of record in this action, in the course of rendering advice to his or her client(s) with respect to this action, from conveying to any necessary party representative his or her general evaluation of Protected Material where such information is material to the scope of the attorney's representation of his or her client. In rendering such ad-

vice and otherwise communicating with his or her client, however, outside counsel shall not disclose the specific contents of any Protected Material where prohibited by the terms of this Order.

- i. Subject to Section 3(b)(iii), nothing herein shall limit or restrict the use of information or documents designated as Confidential Information at any hearing or trial.

6. Protected Material Sought In Other Litigation: In the event a Receiving Party is served with a subpoena or order issued in other litigation that would compel the production or disclosure of any Protected Material, the Receiving Party must notify the Designating Party, in writing (and by fax or email, if possible) in no more than ten (10) court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must inform in writing the person who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Order, and deliver a copy of this Order promptly to such person.

The purpose of imposing these duties on a Receiving Party is to alert the interested parties to the existence of the order or subpoena and to afford the Designating Party an opportunity to protect its interest in the forum where the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its Protected Material.

Nothing in this order should be construed as authorizing or encouraging a Receiving Party to disobey a lawful directive from another court.

7. Non-Party Disclosures and Designations: Non-parties producing documents in the course of this action may also designate documents as “Confidential”, subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such non-parties shall be treated as “Confidential” for a period of 14 days from the date of their production, and during that period any party may designate such documents as “Confidential” pursuant to the terms of the Protective Order.
8. Unauthorized Disclosure Of Protected Material: If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately: (a) notify in writing the Producing Party and, if different, the Designating Party of the unauthorized disclosures, (b) uses its best efforts to retrieve all copies of the Protected Material (and, if the Protected Material was filed with the Court by the Receiving Party, move the Court to have the Protected Material filed under seal), and (c) informs the person or persons to whom the unauthorized disclosures were made of all the terms of this Order, and (d) requests such person or persons execute the Written Assurance that is attached hereto as Exhibit A.
9. Filing Protected Material: If a party files documents containing Confidential information with the Court, such filings shall be in compliance with the Electronic Case Filing Procedures for the District of Minnesota and the Court’s governing pretrial scheduling order addressing the service and delivery of “Confidential”

materials on a party opponent and the Court. The parties understand that designation by a party, including a third party, of a document as “Confidential” pursuant to this Protective Order cannot be used as the sole basis for filing the document under seal in connection with a nondispositive, dispositive or trial-related motion. Only those documents and portions of a party’s submission (including those portions of affidavits, exhibits and memorandum of law) which otherwise meet the requirements of protection from public filing (e.g. a statute, rule or regulation prohibits their disclosure; they are protected under the attorney-client privilege or work product doctrine; or they meet the standards for protection articulated in F.R.C.P. Rule 26(c)(1)(G)) shall be filed under seal. If the party submitting a document produced and designated as “Confidential” by another party in support or opposition to a motion believes that any such document should not be filed under seal, then sufficiently in advance of the submission, the party shall request the party designating the document as “Confidential” to permit the document to be publically filed, and the designating party shall respond to the request within two business days of the request (a) by indicating whether the designating party agrees or objects to the public filing of the document, and (b) for any objection, by explaining why the document meets the requirements of protection from public filing. If the party designating the document as “Confidential” objects to the public filing of any document, then the document shall be filed under seal, and at the same time as it is filed, the party filing the sealed document must notify in writing the party who designated the document as “Confidential” and the Court hearing the motion for which the sealed document is being submitted, of

the dispute regarding the filing of the document under seal. At the hearing these parties shall address with the Court whether the document should or should not remain sealed. The party asserting that the document should be filed under seal shall have the burden of proving that the document shall remain under seal.

10. Final Disposition: Unless otherwise ordered by the Court or agreed in writing by the Producing Party, within sixty (60) days after the final termination of this action, each Receiving Party must return all Discovery Material to the Producing Party. As used in this section “all Discovery Material” includes all copies, abstracts, compilations, summaries, excerpts, or any other form of reproducing or capturing any of the Discovery Material. At the Receiving Party’s option, it may destroy some or all of the Discovery Material instead of returning it. Whether the Discovery Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, the Designating Party) by the sixty (60) day deadline that identifies (by category, where appropriate) all the Discovery Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Discovery Material.

Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain Discovery Material. Any such archival copies that contain or constitute Discovery Material remain subject to this Order as set forth in section 3, above.

11. Miscellaneous

- a. Additional Parties: Any party named, served, and appearing in this action after the date this Order is entered shall be bound by its terms, effective once the Order has been served upon such Party, unless the Court orders otherwise on good cause shown. Any party who causes another party to be added to this action after entry of this Order shall serve that new party with a copy of this Order and any subsequent amendments to it at the time it serves its pleading and summons.
- b. Further Amendment: Except as otherwise provided in this Order, its terms may be amended only by written stipulation of the parties or by order of the Court, on noticed motion, for good cause shown.

IT IS SO ORDERED

Date: April 13, 2015

s/ Janie S. Mayeron
JANIE S. MAYERON
United States Magistrate Judge

EXHIBIT A

WRITTEN ASSURANCE

**ACKNOWLEDGEMENT OF PROTECTIVE ORDER AND
AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
_____ [print or type full address], de-
clare that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the District of Minnesota on
_____, 2015 in the lawsuit entitled *R.J. Zayed v. Associated Bank, N.A.*,
Case No. 13-cv-00232 (DSD-JSM) (the "Protective Order").

I agree to comply with and be bound by all of the terms of the Protective Order,
and I understand and acknowledge that failure to so comply could expose me to sanc-
tions and punishment in the nature of contempt.

I further agree to submit to the jurisdiction of the United States District Court for
the District of Minnesota for the purpose of enforcing the terms of this Stipulated Protec-
tive Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____