

At IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, NY on the 30 day of May, 2014.

MARCY S. FRIEDMAN, J.S.C.

PRESENT: Hon. _____, J.S.C.

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

DEUTSCHE BANK TRUST COMPANY AMERICAS,

Plaintiff,

-against-

HPM PARTNERS LLC, BENJAMIN A. PACE III,
LAWRENCE B. WEISSMAN, STEVEN A.
KUROSKO, LINDSEY JONATHAN NADEL, QUINN
JO-ROSE PORTFOLIO, and NEZA BEVC,

Defendants.

Index No. 651622/2014

MOTION SEQUENCE # 001

**ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION
IN AID OF ARBITRATION WITH TEMPORARY RESTRAINTS**

Upon the Verified Complaint, sworn to May 27, 2014, the annexed Affidavit of Cynthia P. Nestle, sworn to May 27, 2014, the annexed Affirmation of Emergency of John Siegal, sworn to on May 27, 2014, and the accompanying Plaintiff's Memorandum Of Law In Support Of Its Motion For Injunctive Relief In Aid Of Arbitration, dated May 27, 2014, and no prior application having been made in any court for the relief sought herein;

IT IS HEREBY ORDERED that Defendants HPM Partners LLC ("HPM"), and Benjamin A. Pace, III, Lawrence B. Weissman, Steven A. Kurosko, Lindsey Jonathan Nadel, Quinn Jo-Rose Portfolio, and Neza Bevc (the individual defendants collectively the "Employee Defendants," together with HPM, the "Defendants") show cause at IAS Part 60 of this Court at the Courthouse located at 60 Centre Street, New York, New York, Room 248 on June 24, 2014

at ^{11:00} 11 A.M., or as soon thereafter as counsel can be heard, why an order should not be entered in this action pursuant to CPLR 6313(a) and 7502(c), pending hearing and determination on the merits by a panel of arbitrators before FINRA, that:

(a) Plaintiff Deutsche Bank Trust Company Americas (“DB”)’s Code of Professional Conduct, Notice & Non Solicitation Obligations Policy, and employment agreements, in particular the non-solicitation and notice period provisions contained therein, is adjudged, declared, and decreed as enforceable as against the Employee Defendants;

(b) Defendants Pace and Weissman are preliminary enjoined from joining HPM, and HPM is enjoined from hiring the same individuals, for a period of 90 days beginning on May 16, 2014, consistent with these defendants’ obligations to provide DB with “written notice 90 calendar days prior to separation of employment” as provided in DB’s Notice & Non Solicitation Obligations Policy – US (and incorporated into DB’s Code of Professional Conduct), as well as the “Notice and Non-Solicit” provision of the applicable employment agreements;

(c) Defendants Kurosko and Nadel are preliminary enjoined from joining HPM, and HPM is enjoined from hiring the same individuals, for a period of 60 days beginning on May 16, 2014, consistent with these defendants’ obligation to provide DB with “written notice 60 calendar days prior to separation of employment” as provided in DB’s Notice & Non Solicitation Obligations Policy – US (and incorporated into DB’s Code of Professional Conduct), as well as the “Notice and Non-Solicit” provision of the applicable employment agreements;

(d) The Employee Defendants are preliminary enjoined, and HPM is enjoined from aiding, abetting, or inducing the Employee Defendants, for a period of 120 days from the termination of the Employee Defendants’ employment with DB, from: (1) directly or indirectly, soliciting, or facilitating obtaining business from any DB client which was a client of the

Employee Defendants' division at any time during his or her employment, in any case other than for DB; (2) inducing or attempting to induce any such client to reduce or terminate its business with DB; or (3) directly or indirectly, soliciting, inducing, causing, participating or assisting any third party in soliciting any employees from the Employee Defendants' division to work for HPM as provided for in DB's Code of Professional Conduct, as well as the "Non-Solicit" provision of the applicable employment agreements.

(e) HPM is preliminary enjoined from directly or indirectly soliciting or facilitating obtaining business from any DB client which was a client of the Employee Defendants' division at any time during the Employee Defendants' employment, and from inducing or attempting to induce any such client to reduce or terminate its business with DB, until 120 days from the termination of the Employee Defendants' employment with DB;

(f) HPM is preliminary enjoined from directly or indirectly soliciting, inducing, causing, participating or assisting any third party in soliciting any employees from the Employee Defendants' division to work for HPM until 120 days from the termination of the Employee Defendants' employment with DB;

(g) The Employee Defendants and HPM are preliminary enjoined from directly or indirectly using, disclosing, transmitting, or publishing in any manner whatsoever any DB confidential and/or proprietary information and/or trade secrets for any purpose whatsoever, including to directly or indirectly solicit business from DB's clients, potential clients or otherwise;

(h) The Employee Defendants and HPM are ordered to return to DB within twenty-four (24) hours of service of a Preliminary Injunction Order, or within twenty-four (24) hours of later coming into or learning they are in possession, custody or control of, any originals or copies

of documents in their possession, custody or control not currently maintained in DB's offices, whether in hard copy or computerized or other electronic media form, that (i) contain any confidential, proprietary, and/or trade secret information of DB, or (ii) contain any business information of DB that the Employee Defendants obtained by virtue of their employment at DB; and

(i) together with any return of the documents set forth in the immediately preceding paragraph, the Employee Defendants and HPM shall each execute and deliver to DB an affidavit, under oath and subject to all appropriate penalties, stating that neither they nor their agents, representatives nor any persons acting in concert with them or on their behalf have or has possession, custody or control of any original or copies of any documents not currently maintained in DB's offices that (i) contain any confidential, proprietary, and/or trade secret information of DB, or (ii) contain any business information of DB that the Employee Defendants obtained by virtue of their employment at DB;

IT IS FURTHER ORDERED that ^{Pending the hearing of this order} ~~until the earlier of the hearing and determination of~~
~~to show cause~~
~~Plaintiff's application for declaratory judgment and a preliminary injunction or the dates set forth~~
below, Defendants and their agents, representatives, and all other persons acting on their behalf or in concert with them with actual notice of this Order are temporarily restrained as follows:

~~(a) Defendants Pace and Weissman are temporarily restrained from joining HPM, and HPM is temporarily restrained from hiring the same individuals, for a period of 90 days beginning on May 16, 2014, consistent with these defendants' obligation to provide plaintiff Deutsche Bank Trust Company Americas ("Plaintiff" or "DB") with "written notice 90 calendar days prior to separation of employment" as provided in DB's Notice & Non-Solicitation~~

~~Obligations Policy – US (and incorporated into DB’s Code of Professional Conduct), as well as the “Notice and Non-Solicit” provision of the applicable employment agreements.~~

(b) ~~Defendants Kurosko and Nadel are temporarily restrained from joining HPM, and HPM is temporarily restrained from hiring the same individuals, for a period of 60 days beginning on May 16, 2014, consistent with these defendants’ obligation to provide DB with “written notice 60 calendar days prior to separation of employment” as provided in DB’s Notice & Non Solicitation Obligations Policy – US (and incorporated into DB’s Code of Professional Conduct), as well as the “Notice and Non-Solicit” provision of the applicable employment agreements;~~

(c) ~~The Employee Defendants are temporarily restrained, and HPM is temporarily restrained from aiding, abetting, or inducing the Employee Defendants, for a period of 120 days from the termination of the Employee Defendants’ employment with DB, from:~~ (1) directly or indirectly, soliciting, or facilitating obtaining business ^{from} any DB client which was a client of the Employee Defendants’ division at any time during his or her employment, in any case other than for DB; (2) inducing or attempting to induce any such client to reduce or terminate its business with DB; or (3) directly or indirectly, soliciting, inducing, causing, participating or assisting any third party in soliciting any employees from the Employee Defendants’ division to work for HPM as provided for in DB’s Code of Professional Conduct, as well as the “Non-Solicit” provision of the applicable employment agreements.

(d) ~~HPM is temporarily restrained from directly or indirectly soliciting or facilitating obtaining business from any DB client which was a client of the Employee Defendants’ division at any time during the Employee Defendants’ employment, and from inducing or attempting to~~

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~~induce any such client to reduce or terminate its business with DB, until 120 days from the termination of the Employee Defendants' employment with DB;~~

(e) HPM is temporarily restrained from directly or indirectly soliciting, inducing, causing, participating or assisting any third party in soliciting any employees from the Employee Defendants' division to work for HPM ~~until 120 days from the termination of the Employee Defendants' employment with DB;~~

(f) The Employee Defendants and HPM are temporarily restrained from directly or indirectly using, disclosing, transmitting, or publishing in any manner whatsoever any DB confidential and/or proprietary information and/or trade secrets for any purpose whatsoever, including to directly or indirectly solicit business from DB's clients, potential clients or otherwise;

(g) The Employee Defendants and HPM are ordered to return to DB within twenty-four (24) hours of service of a Temporary Restraining Order, or within twenty-four (24) hours of later coming into or learning they are in possession, custody or control of, any originals or copies of documents in their possession, custody or control not currently maintained in DB's offices, whether in hard copy or computerized or other electronic media form, that (i) contain any confidential, proprietary, and/or trade secret information of DB, or (ii) contain any business information of DB that the Employee Defendants obtained by virtue of their employment at DB; and

(h) together with any return of the documents set forth in the immediately preceding paragraph, the Employee Defendants and HPM shall each execute and deliver to DB an affidavit, under oath and subject to all appropriate penalties, stating that neither they nor their agents, ~~representatives nor any persons acting in concert with them or on their behalf have or has~~

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~~possession, custody or control of any original or copies of any documents not currently maintained in DB's offices that (i) contain any confidential, proprietary, and/or trade secret information of DB, or (ii) contain any business information of DB that the Employee Defendants obtained by virtue of their employment at DB;~~

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IT IS FURTHER ORDERED that a copy of this Order to Show Cause, together with supporting papers upon which it was granted, be served upon the Defendants, ^{by personal} ~~or their counsel if~~ service on or before June 3, 2014 authorized to accept service, ~~by overnight delivery so as to be received no later than May 2014~~ and that such service be deemed good and sufficient service of those papers.

ENTER:


HON. J.S.C.

MARCY S. FRIEDMAN, J.S.C.

Opposition papers shall be served by 6-13-14.
Reply papers, if any, shall be served by 6-20-14.
All papers shall be served so received by above dates, and shall be e-filed, with hard copies to be filed with the Clerk of Part 60 ~~at least three (3) days before the return date.~~ by 6-20-14
by NYSCFF, unless a party is exempt from e-filing, and by overnight mail.
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~~ORDERED, that opposition papers, if any, shall be served on the on or before~~

**ORAL ARGUMENT
DIRECTED**

J.S.C.

Insert A to Page 4 of Order to Show Cause dated May 30, 2014

IT IS FURTHER ORDERED that pending the hearing of this order to show cause, Defendants and their agents, representatives, and all other persons acting on their behalf or in concert with them with actual notice of this Order are temporarily restrained as follows:

- (a) Each Employee Defendant and HPM are temporarily restrained from directly or indirectly soliciting business from or entering into any business relationship with any DB client or customer on whose account said Employee Defendant(s) worked;
- (b) Each Employee Defendant and HPM are temporarily restrained from directly or indirectly soliciting or assisting any third party in soliciting any employees from the Employee Defendants' division to work for HPM;
- (c) Each Employee Defendant and HPM are temporarily restrained from using, disclosing, transmitting, or publishing any confidential information or trade secrets of DB; and
- (d) Each Employee Defendant and HPM shall preserve any documents, computer-hard drives or other information storage devices containing DB information.

Provided that: Nothing herein shall be construed as (1) preventing Employee Defendants and/or HPM from doing business with any clients of the Employee Defendant(s) who moved their business to HPM prior to the date of this order; (2) prohibiting Employee Defendants from soliciting clients or customers who came to DB solely to avail themselves of the Employee Defendants' services and only as a result of said Defendants' independent recruitment efforts which DB neither subsidized nor otherwise financially supported as a part of a program of client development (BDO Seidman v Hirschberg, 93 NY2d 382, 393).

Further Provided that: The striking of injunctive provisions, which DB requests on pages 4 and 5 of the order to show cause that it has submitted, shall not be construed as determining the enforceability of the Notice and Non-Solicitation provisions set forth in Exhibits B-D to said order to show cause.



MARCY S. FRIEDMAN, J.S.C.