

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5890 / October 18, 2021

Admin. Proc. File No. 3-20531

In the Matter of

HORTER INVESTMENT MANAGEMENT, LLC
AND DREW K. HORTER

PROTECTIVE ORDER

On September 8, 2021, the Securities and Exchange Commission issued an order instituting an administrative proceeding (“OIP”) against Horter Investment Management, LLC and Drew K. Horter (collectively, “Respondents”) pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940.¹ On October 8, 2021, the Division of Enforcement moved for entry of a protective order concerning the use and disclosure of nonpublic sensitive information that the Division has or will disclose in connection with discovery in this proceeding. The Division represented that Respondents have no objection to the entry of the Division’s proposed order, which the Division submitted with its motion.

Commission Rule of Practice 322 provides that a party may seek a protective order limiting disclosure of a document or testimony that contains confidential information.² We will grant such a motion “only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.”³ Because the Division represents that portions of the Division’s investigative file produced or to be produced to Respondents contain personal identifiable information, we grant the Division’s unopposed motion for a protective order.⁴

¹ *Horter Inv. Mgmt., LLC*, Advisers Act Release No. 5853, 2021 WL 4100538 (Sept. 8, 2021).

² 17 C.F.R. § 201.322(a).

³ 17 C.F.R. § 201.322(b).

⁴ *See, e.g., Paul L. Chancey, Jr., CPA*, Exchange Act Release No. 92734, 2021 WL 3726151 (Aug. 23, 2021) (granting request for a protective order against the disclosure of personal

Accordingly, it is ORDERED, based on the language in the Division's proposed protective order, with some minor revisions, that:

1. In this order ("Protective Order"), the term "Confidential Information" shall mean any one or more of the following categories of information: (a) social security or tax identification number; (b) individuals' financial account statements, including statements for any bank account, credit card account, brokerage account, mortgage, student loan, or other loan; (c) financial account number, including bank account, brokerage account, and investment account numbers; (d) tax returns; (e) the home address and phone number of any individual person; (f) credit card or debit card number; (g) passport number, driver's license number, or state-issued identification number; (h) date of birth; and (i) personal medical information. Confidential Information includes any "sensitive personal information" as defined in Commission Rule of Practice 151(e), 17 C.F.R. § 201.151(e). Confidential Information does not include the last four digits of a financial account number or phone number, the city and state portion of an individual's home address, the year of an individual's birth, and copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website.

2. The Division of Enforcement and Respondents shall maintain the confidentiality of the Confidential Information, shall use it solely for the purposes of this proceeding, and shall not disclose it to any third party unless such disclosure is required or permitted by applicable statute or regulation, lawfully issued subpoena, or Commission, hearing officer, or court order. Nothing in this Protective Order limits Respondents' ability to use or disclose their own Confidential Information in any manner. Nothing in this Protective Order shall prevent the Division from complying with its obligations under law concerning disclosure of documents, including but not limited to its published Routine Uses of Information in Forms 1661 and 1662,⁵ the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and any other statutes or rules applicable to the Division, or interfere with the Division's use of information for law enforcement activities and to otherwise regulate, administer, and enforce the federal securities laws.

3. In making any Commission filings, the Division or Respondents may describe Confidential Information or attach Confidential Information as exhibits or in exhibits. Such a filing shall not constitute a violation of this Protective Order. A filing that contains Confidential

identifiable information); *Christopher E. Knauth, CPA*, Exchange Act Release No. 92482, 2021 WL 3128191 (July 23, 2021) (same).

⁵ See <https://www.sec.gov/files/sec1661.pdf> (describing principal and routine uses of information obtained other than pursuant to Commission subpoena); <https://www.sec.gov/files/sec1662.pdf> (same as to information obtained voluntarily or pursuant to Commission subpoena).

Information will be filed under the sealing and redaction procedures of Rule of Practice 322(b), 17 C.F.R. § 201.322(b).⁶

4. Nothing in this Protective Order shall preclude the parties from offering Confidential Information into evidence at the hearing in this matter or in any other proceeding, subject to the restrictions set forth in this Protective Order.

5. This Protective Order shall survive the termination of the litigation. Unless otherwise agreed or ordered, this Protective Order shall remain in force after dismissal or entry of a final judgment not subject to further appeal.

6. This Protective Order shall be subject to modification by the Commission or a presiding hearing officer on the Commission's or the officer's own motion, on the Division's or Respondents' motion, or on the motion of any other person with standing.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

⁶ See also <https://www.sec.gov/efapdocs/instructions.pdf> at §§ 4.1.4, 5.2 (addressing the submission of sealed and redacted materials to the Commission's Office of the Secretary through the Electronic Filings in Administrative Proceedings (eFAP) system).