

**NorCap Absolute Return Fund UCITS v Marex
Capital Mkts. Inc.**

2024 NY Slip Op 31447(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 654612/2023

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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NORCAP ABSOLUTE RETURN FUND UCITS,	INDEX NO. <u>654612/2023</u>
Plaintiff,	MOTION DATE <u>--</u>
- v -	MOTION SEQ. NO. <u>002 003</u>
MAREX CAPITAL MARKETS INC. F/K/A E D & F MAN CAPITAL MARKETS INC.,	DECISION + ORDER ON MOTION
Defendant.	
-----X	

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86
were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106
were read on this motion to/for SEAL.

In motion sequence 002, petitioner NorCap Absolute Return Fund UCITS (NorCap) moves, by order to show cause, pursuant to Section 202.5-b(d) of the Uniform Rules for the New York State Trial Courts,¹ to seal² NYSCEF Doc. Nos. (NYSCEF) 1-6, 8-21, 23, and 37 on the grounds that these documents are protected by a confidentiality

¹ Section 202.5-b(d)(3)(iii) of the Uniform Rules for the New York State Trial Courts provides: "If a document filed electronically is subsequently discovered to contain confidential data - including but not limited to trade secrets, information protected by confidentially agreement, or personal confidential information as defined by statute or court rule - or otherwise to have been filed in error, the filer or another party or affected person may ... file an application to correct the filing by order to show cause within five business days of such notification (or such time as the court may direct), including a request for preliminary injunctive relief limiting interim disclosure of the document at issue."

² Although some of the documents that are subject to the motion include highlights, NorCap's motion is to seal rather than to redact these documents.

agreement between the parties. These documents are the petition (NYSCEF 1), a statement of claim in the underlying arbitration (NYSCEF 2), Non-Broker-Dealer Portfolio Margin Agreement Supplement (NYSCEF 3), Ya Li's³ March 2, 2020 email (NYSCEF 4), respondent Marex Capital Markets Inc. f/k/a E D & F Man Capital Markets Inc.'s (Marex) answer and counterclaims (NYSCEF 5), account agreement (NYSCEF 6), NorCap' pre-hearing memorandum of law in the arbitration (NYSCEF 8), arbitration transcripts (NYSCEF 9-19, 37), February 28, 2020 email regarding Options Clearing Corporation margin call (NYSCEF 20), PM margin reports (NYSCEF 21), and memorandum of law in support of the petition (NYSCEF 23).⁴

Marex filed a brief in support of sealing and a sealing chart. Marex argues that NYSCEF 1-2, 4-5, 8, 21, and 23 should be redacted and NYSCEF 9-19, and 37 should be sealed because these documents include confidential business information relating to Marex's risk management policies and procedures.

In motion sequence 003, Marex moves, by order to show cause, pursuant to Section 202.5-b(d) of the Uniform Rules for the New York State Trial Courts, to redact NYSCEF 5 and 91⁵ on the grounds that these documents contain confidential business

³ Li is respondent's Chief Risk Officer of Derivative Products. (NYSCEF 1, Petition ¶ 14.)

⁴ The following are unredacted copies of identical documents: NYSCEF 1 and 49; NYSCEF 2 and 51; NYSCEF 4 and 53; NYSCEF 5 and 55; NYSCEF 8 and 85; NYSCEF 9 and 57; NYSCEF 10 and 59; NYSCEF 11 and 61; NYSCEF 12 and 63; NYSCEF 13 and 65; NYSCEF 14 and 67; NYSCEF 15 and 69; NYSCEF 16, 17, 71 and 73; NYSCEF 18 and 75; NYSCEF 19 and 77; NYSCEF 21 and 79; NYSCEF 23 and 81; and NYSCEF 37 and 83.

⁵ The following are unredacted copies of identical documents: NYSCEF 5 and 103, NYSCEF 91 and 101.

information. The motion is unopposed. There is no indication that the press or public have an interest in this matter.

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records.” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010] [citations omitted].) The public’s right to access is, however, not absolute, and under certain circumstances, “public inspection of court records has been limited by numerous statutes.” (*Id.* at 349.) One of those statutes is section 216.1 (a) of the Uniform Rules for Trial Courts, which empowers courts to seal documents upon a written finding of good cause. It provides:

“Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.”

The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Mosallem*, 76 AD3d at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotation marks omitted].) Further, in the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosallem*, 76 AD3d at 350 [citations omitted].)

Motion Sequence 002

The court finds that through NorCap and Marex's filings, good cause has been shown (i) to redact NYSCEF 1-2, 4-5, 8, 21, and 23 as Marex proposes and (ii) to seal NYSCEF 9-19, and 37 (arbitration hearing transcripts). Murex shall file publicly available copies of NYSCEF 1-2, 4-5, 8, 21, and 23 with its proposed redactions.

Since the sealed documents are clearly identified in this decision, the public and press can meaningfully challenge the seal designation if they are so inclined.

Motion Sequence 003

The court finds that Marex has demonstrated good cause to redact NYSCEF 5 and 91 as proposed. Since the publicly available redacted copies of NYSCEF 5 and 91 have already been filed as NYSCEF 100 and 102, Marex need not refile the public copies.

Accordingly, it is

ORDERED that motion sequence number 002 is granted, in part, to the extent that NYSCEF 1-2, 4-5, 8, 21, and 23 shall be redacted and NYSCEF 9-19, and 37 shall be sealed; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 1-6, 8-21, 23, 37, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, 83, and 85; and it is further

ORDERED that Marex Capital Markets Inc. f/k/a E D & F Man Capital Markets Inc. shall file publicly available copies of NYSCEF 1-2, 4-5, 8, 21, and 23 with its proposed redactions within 7 days of this order; and it is further

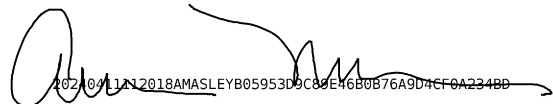
ORDERED that motion sequence number 003 is granted; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 5, 91, 101, and 103; and it is further

ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that movant shall serve a copy of this order on the County Clerk in accordance with the procedures set forth in the Protocol on Courthouse County Clerk Procedures for Electronically Filed Cases; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



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4/11/2024

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE