

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

_____)	
UNITED STATES EX REL. [SEALED],)	
)	
Plaintiff,)	
)	
v.	)	C.A. No. 0:10-cv-01465-JFA
)	
[SEALED],	)	NOTICE REGARDING DISCLOSURE
ET AL.	)	OF <i>QUI TAM</i> SUIT TO EMPLOYEES
	)	[SEALED]
Defendants,)	
)	
_____)	

FILED UNDER SEAL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

)	
)	
UNITED STATES EX REL. SZYMONIAK,)	
)	
Plaintiff,	)	C.A. No. 0:10-cv-01465-JFA
)	
v.)	
)	
AMERICAN HOME MORTGAGE	)	NOTICE REGARDING
SERVICING, ET AL.	)	DISCLOSURE OF <i>QUI TAM</i> SUIT
	)	TO EMPLOYEES OF
	)	BLACKROCK FINANCIAL
Defendants,	)	MANAGEMENT, INC.
)	
)	
)	

FILED UNDER SEAL

This *qui tam* lawsuit was filed under seal pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2), and remains under seal until August 10, 2011. The purpose of the sealing requirement is “to allow the Government an adequate opportunity fully to evaluate the private enforcement suit and to determine both if that suit involves matters the Government is already investigating and whether it is in the Government’s best interest to intervene and take over the civil action.” S. Rep. No. 345, 99th Cong., 2d Sess. 24 (1986). In addition, the seal is intended to guard against premature disclosures of sensitive criminal investigations.

This Notice Regarding Disclosure of Qui Tam Suit To Employees of BlackRock Financial Management, Inc. (the “Notice”) is submitted by the United States to inform the Court and the relator of the inadvertent disclosure of the existence of the qui tam suit to four employees of BlackRock Financial Management, Inc., a company that is acting as an agent for the Federal Reserve Bank of New York in connection with the Maiden Lane transactions discussed in the relator’s amended complaint. The Civil Division and the U.S. Attorney first became aware of the disclosure described herein on Thursday, March 28, 2011, and have investigated the

disclosure diligently. As a result of our review, we advise the Court and the relator the following.

On November 17, 2010, in response to a request from the United States, the Court issued an order partially lifting the seal in this matter for the purpose of allowing the United States to disclose the existence and/or contents of the *qui tam* complaint, disclosure statement and associated documents provided by the relator, to personnel from the Federal Reserve Bank of New York (FRBNY). [ECF Dkt. # 12].¹ Consistent with this authority, and in furtherance of the investigation, on April 6, 2011, a copy of the complaint in this action was sent to the FRBNY by e-mail. Attachment 1 (Declaration of William O. Bittman, Jr.) (“Bittman Decl.”) ¶ 3. A meeting subsequently was held on April 28, 2011, attended by Justice Department (DOJ) officials at the FRBNY’s offices in New York to discuss, among other things, the FRBNY’s involvement with the “Maiden Lane” companies.² Bittman Decl. ¶ 8.

In anticipation of the April 28th meeting between FRBNY and DOJ, Ms. Sheri Leventhal, an FRBNY official, advised one of the DOJ employees, Mr. William O. Bittman, Jr., she believed it would be useful to have representatives from the FRBNY portfolio manager, BlackRock, participate in the meeting. Bittman Decl. ¶ 4. Mr. Bittman conferred with other

¹ On December 28, 2010, the seal in this case was partially lifted to allow disclosure of the *qui tam* to various States in connection with the investigation, and to another Federal District Court. [ECF Dkt. No. 15]. On March 14, 2011, the seal was partially lifted to allow the United States, at its discretion, to discuss the *qui tam* complaint with defendants. [ECF Dkt. No. 20].

² Maiden Lane LLC, a Delaware limited liability company, was formed in connection with, and to facilitate the merger of The Bear Stearns Companies Inc., and JPMorgan Chase & Co. As part of the U.S. government’s efforts to support the financial markets in 2008. The FRBNY is the sole and managing member of the LLC. The FRBNY retained BlackRock Financial Management Inc. (BlackRock) to manage the investment portfolio of the LLC under guidance established by the FRBNY and governed by an investment management agreement. [<http://www.newyorkfed.org/markets/maidenlane.html>] (Last reviewed on May 5, 2011)]. BlackRock acts as the FRBNY’s agent with respect to Maiden Lane and is subject to a confidentiality agreement in connection with its activities. Specifically, the BlackRock employees involved in Maiden Lane activities are subject to BlackRock’s “Confidentiality and Employment Policy,” which requires the employees to maintain the confidentiality of all client affairs and, further, are subject to BlackRock information barrier policies and procedures. See Attachment 2 (Declaration of Peter Vaughan), ¶¶ 3 and 8.

DOJ officials and ultimately advised Ms. Leventhal that the BlackRock officials could participate, as long as the existence of the *qui tam* matter would not be disclosed. Bittman Decl. ¶¶ 5-7. As is further confirmed by Mr. Bittman's declaration, the communication between DOJ and FRBNY about the precise nature of the disclosure that should be made to BlackRock was unclear. This lack of clarity was unfortunate but inadvertent and was unintentional. See Bittman Decl. ¶¶ 7-8.

DOJ first learned that BlackRock officials had been provided copies of the *qui tam* complaint during the April 28th meeting. Bittman Decl. ¶ 8. As a result, DOJ officials directed BlackRock to retrieve and return or destroy any copies of the complaint and to conduct an investigation to ascertain to whom the sealed matter had been revealed and, further, to provide an affidavit for the Court advising of the status of the inadvertently disclosed information and efforts undertaken to protect against further disclosures. Bittman Decl. ¶ 9; see Attachment 2 (Declaration of Peter Vaughan).

As a result of the foregoing, the United States has obtained a declaration from Mr. Peter Vaughan, a Managing Director and Senior Counsel of BlackRock explaining, among other things, the following:

- BlackRock's policies for protection of sensitive and confidential information;
- A description of the events leading to the retention of BlackRock by FRBNY;
- A description of the events leading to the inadvertent disclosure of the *qui tam* complaint to BlackRock officials, including the identity of all such officials; and
- BlackRock's steps to retrieve and destroy copies of the complaint in this matter and other efforts to prevent against further disclosure of the matters under seal.

Mr. Vaughan's declaration is attached hereto as Attachment 2.

The United States brings this Notice to the attention of the Court to ensure that it is fully and promptly informed of matters regarding the seal. To the best of the Government's information, knowledge and belief, the disclosure to the employees at BlackRock has not

compromised any civil, criminal or other investigation of the matters raised in the *qui tam* complaint and all steps have been quickly taken to ensure that additional disclosures will not be made prior to this Court unsealing the *qui tam* complaint.

The relator has been served with a copy of this Notice.

Respectfully submitted,

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