

TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

PRELIMINARY STATEMENT 1

BACKGROUND 3

 A. The Parties and The Arbitration..... 3

 B. Petitioners’ Employment Agreements 6

 C. The Confidentiality Order..... 7

 D. The Petition..... 8

ARGUMENT 8

 POINT I. THE LEGAL STANDARD FOR A SEALING ORDER..... 9

 POINT II. THE AWARD SHOULD BE PUBLICLY FILED AND
 THERE ARE NO TRADE SECRETS DISCLOSED THEREIN
 JUSTIFYING REDACTION.....13

CONCLUSION.....15

TABLE OF AUTHORITIES**CASES**

<i>Aioi Nissay Dowa Ins. Co. Ltd. v. ProSight Specialty Mgmt. Co., Inc.</i> , No. 12 Civ. 3274, 2012 WL 3583176 (S.D.N.Y. Aug. 12, 2012)	9
<i>Alexandria Real Estate Equities Inc. v. Fair</i> , No. 11-cv-3694, 2011 WL 6015646 (S.D.N.Y. Nov. 30, 2011).....	11, 13, 15
<i>Century Indem. Co. v. AXA Belgium</i> , No. 11 Civ. 7263, 2012 WL 4354816 (S.D.N.Y. Sept. 24, 2012).....	8, 13, 15
<i>Church Ins. Co. v. Ace Property & Casualty Ins. Co.</i> , No. 10-cv-698, 2010 WL 3958791 (S.D.N.Y. Sept. 23, 2010)	13, 15
<i>Clearwater Ins. Co. v. Granite State Ins. Co.</i> , No. 15-cv-165, 2015 WL 13687223 (S.D.N.Y. Mar. 2, 2015).....	12, 15
<i>Danco Labs., Ltd. v. Chem. Works of Gedeon Richter, Ltd.</i> , 274 A.D.2d 1 (1st Dep't 2000)	12
<i>Eagle Star Ins. Co. Ltd. v. Arrowood Indemnity Co.</i> , No. 13-cv-3410, 2013 WL 5322573 (S.D.N.Y. Sept. 23, 2013)	13, 15
<i>Global Reinsurance Corp.–U.S. Branch v. Argonaut Ins. Co. (Global II)</i> , No. 07-cv-8196, 2008 WL 1805459 (S.D.N.Y. Apr. 21, 2008)	11, 12
<i>Gryphon Dom. VI, LLC v. APP Intl. Fin. Co., B.V.</i> , 28 A.D.3d 322 (1st Dep't 2006)	9, 11, 12
<i>Istithmar World PJSC v. Amato</i> , No. 12-cv-7473, 2013 WL 66478 (S.D.N.Y. Jan. 7, 2013)	11
<i>Lugosch v. Pyramid Co. of Onondaga</i> , 435 F.3d 110 (2d Cir. 2006).....	10
<i>Mancheski v Gabelli Group Capital Partners</i> , 39 A.D.3d 499 (2d Dep't 2007).....	10, 12, 15
<i>MBIA Insurance Corporation v. Countrywide Home Loans, Inc.</i> , No. 602825/08, 2013 WL 450030 (Sup. Ct., NY County, Jan. 3, 2013).....	10
<i>Mosallem v. Berenson</i> , 76 A.D.3d 345 (1st Dep't 2010)	9, 10, 12, 14, 15

Mutual Marine Office Inc. v. Transfercom Ltd.,
 No. 08-cv-10367, 2009 WL 1025965 (S.D.N.Y. Apr. 15, 2009) 13, 15

Redeemer Comm. of Highland Credit Strategies Funds v. Highland Capital Mgmt., L.P.,
 182 F. Supp. 3d 128 (S.D.N.Y. 2016) 11

Schron v. Grunstein,
 977 N.Y.S.2d 670, 2013 WL 5493995 (Sup. Ct., NY County, 2013)..... 11, 12

United States v. Amodeo,
 44 F.3d 141 (2d Cir. 1995)..... 10

STATUTES

22 NYCRR § 216.1(a) 1, 11

Petitioners Lawrence Minicone and Zachary Squire (collectively, “Petitioners”) respectfully submit this memorandum of law in support of their application for an Order pursuant to Section 216.1(a) of the Uniform Rules for New York State Trial Courts regarding the sealing of Exhibits 3 through 5 to Petitioners’ July 1, 2020 Verified Petition (“Petition”) to confirm the Final Award dated July 1, 2020 (the “Final Award” or “Award”) rendered in the arbitration before a three arbitrator panel of the American Arbitration Association (the “Tribunal”), captioned *Bridgewater Associates, LP v. Lawrence Minicone and Zachary Squire*, AAA Case 01-17-0006-7329 (the “Arbitration”).

PRELIMINARY STATEMENT

Petitioners moved to confirm the Award in which the Tribunal found that Bridgewater Associates, LP’s (“Bridgewater’s”) trade secret misappropriation claims were brought in bad faith – with the “intentions [] not to prove misappropriation, but rather, [] to adversely affect [Minicone and Squire’s] ability to conduct a competitive business” – and in violation of Connecticut law. *See* Petition, Ex. 2 (Award at 17-20 & 24). The Tribunal consequently ordered Bridgewater to pay Petitioners \$1,991,411.49 for their attorneys’ fees, expert fees and costs incurred.

Petitioners bring this motion for a ruling that Exhibits 3, 4 and 5 to the Petition be filed under seal, and that Exhibits 1 and 2 (the Award) be filed on the public docket. Even though it is well-settled under New York law that final arbitration awards are to be public in connection with a petition to confirm (especially where, as here, the Award reveals no Bridgewater trade secrets or confidential business strategies), Petitioners have not filed the Award publicly pending the Court’s review of this motion, in an abundance of caution, given Bridgewater’s now-revealed willingness – as the Tribunal expressly found – to “manufacture false evidence” against Petitioners and to file meritless claims that “were brought and/or maintained in bad faith for the purposes of causing

[Minicone and Squire] needless expenditures of money and time in order to defend themselves against the claims.” *Id.* at 17. Indeed, the Tribunal found that:

[Bridgewater] pursued the arbitration knowing that applicable securities rules and regulations would require [Petitioners’ fund] to disclose the pending dispute to prospective investors, and that such disclosure was likely to make prospective investors more wary of investing in the new competitor’s fund. [Bridgewater] knew **that its refusal to identify the alleged trade secrets with specificity would foreclose the possibility of proving its case**, but would have the effect of extending the arbitration and making it difficult and expensive, both in dollars and compelling [Petitioners] to take time away from the work of growing their (competitive) business, in order to defend against [Bridgewater’s] allegations.

Id. at 18 (emphasis added). In light of Bridgewater’s demonstrated willingness to bring unfounded and knowingly baseless claims based on the purported confidentiality of trade secrets and other materials – actions that the Tribunal clearly enumerated and addressed in the Award – Petitioners have not yet publicly e-filed the Award and certain other materials from the Arbitration, and instead seek this Court’s ruling as to what, in addition to the Award, should be filed publicly.

Critically, there can be no argument that trade secrets are revealed in the Award itself because, as the Tribunal found, Bridgewater put no actual trade secrets at issue during the entire Arbitration and “knew that the trade secrets *as described* did not constitute trade secrets”:

[W]e find that the evidence presented establishes that the alleged trade secrets, that is, *the trade secrets as described*, **constituted publicly available information or information generally known to professionals in the industry, and that Claimant [Bridgewater], a highly sophisticated entity, knew that the trade secrets as described did not constitute trade secrets**. We further conclude that the claims of misappropriation were brought and/or maintained in bad faith for the purposes of causing Respondents’ needless expenditures of money and time in order to defend themselves against the claims.

Id. at 17 (emphasis added).

Finally, while the Award does not constitute Protected Material under an October 30, 2018 confidentiality order governing the use of certain materials in the Arbitration (the “Confidentiality Order”), certain exhibits to the Petition are encompassed by the definition of Protected Material;

specifically, Exhibits 3, 4 and 5 to the Petition (which are the pleadings in the Arbitration: Bridgewater's Demand for Arbitration, Petitioners' Answer and Counterclaims, and Bridgewater's Answer). *See* July 1, 2020 Zeisler Affirmation in Support of Petitioners' Motion For Sealing Order ("Zeisler Aff."), Ex. A at 2, Confidentiality Order (definition of Protected Material). Because some of these documents include arguably some proprietary information, Petitioners seek to file those documents under seal pending the outcome of this motion.

BACKGROUND

A. The Parties and The Arbitration

As is set forth in the Petition, Petitioners are former employees of Respondent Bridgewater, the largest hedge fund in the world with approximately \$138 billion under management.¹ Mr. Minicone joined Bridgewater in 2008 when he was 25 years old; Mr. Squire was 24 years old when he joined Bridgewater in 2010. Both Petitioners left Bridgewater separately and voluntarily in mid-2013. Over four years after Petitioners' departure from Bridgewater and two years after their non-compete periods as defined in their employment agreements expired, Bridgewater commenced binding arbitration proceedings against Petitioners on November 17, 2017, alleging misappropriation of trade secrets, breaches of contract and unfair competition – claims which, per findings of the Tribunal, Bridgewater knew to be false or were reckless in not knowing were false based on Bridgewater's own internal records and employees' knowledge. As set forth in the Award, the Tribunal denied all of Bridgewater's claims against Petitioners.

On July 1, 2020, Petitioners moved to confirm the Award ordering Bridgewater to pay Petitioners \$1,991,411.49. Bridgewater immediately opposed Petitioners' Petition to confirm the Award on July 3, 2020, but – importantly for purposes of this motion – did *not* contest or move to

¹ *See* Bloomberg June 15, 2020, <https://www.bloomberg.com/news/articles/2020-06-15/bridgewater-s-assets-shrank-15-in-virus-fueled-trading-slump>.

vacate the findings of the Tribunal unanimously denying Bridgewater's trade secret misappropriation claims (found to be brought in bad faith) and other causes of action. *See* Bridgewater's July 3, 2020 Memorandum of Law in Opposition to Motion to Confirm and In Support of Petition to Vacate the Arbitration Award ("BW's Opp.") at 2:

Bridgewater continues to believe that the arbitrators were mistaken and that it proved its trade secret and contract claims against Respondents. That error, however, is not the subject of this Petition. Bridgewater agreed to arbitrate those trade secret claims, and it accepts the panel's decision that both parties failed to meet their burdens of proof as to their respective claims.²

See also id. at 12 ("Bridgewater does not seek to vacate the Tribunal's decision concerning any claims that were legitimately at issue in the arbitration."). Rather, Bridgewater contests only the amount of the Tribunal's Award to Minicone and Squire of \$1,991,411.49 and whether the Tribunal could award such fees. *Id.* at 23. Bridgewater's concession that it is not challenging the Tribunal's denial of Bridgewater's trade secret misappropriation and other claims is important for two reasons.

First, because Bridgewater does not contest the Tribunal's Award denying those claims (and given that Petitioners moved to confirm the Award), this aspect of the Award should be immediately confirmed.

Second, any argument by Bridgewater that the Award contains "trade secrets" and must be kept hidden should not be countenanced because Bridgewater does not challenge the Tribunal's clear and unequivocal findings that the Award **does not discuss or disclose any trade secrets**. As

² Petitioners had also brought certain counterclaims in their individual capacities against Bridgewater that were denied. However, Bridgewater's characterization of the denial of its own claims as supposedly failing to meet its "burdens of proof" is a remarkable understatement given that the Tribunal found "that Bridgewater's claims of misappropriation of trade secrets were filed and maintained in bad faith," and awarded Petitioners \$1.99 million "to place Respondents in a position as near to what their situation would have been had the arbitration not been brought." *See* Petition, Ex. 2 (Award at 20, 22); *see also* Award at 21-22 ("On the question of whether Respondents have proved that Claimant brought and maintained this action in bad faith, we find in the affirmative and award Respondents attorneys' fees...").

the Tribunal found, nothing presented as evidence by Bridgewater throughout the Arbitration constituted a trade secret:

[W]e find that the evidence presented establishes that the alleged trade secrets, that is, *the trade secrets as described*, **constituted publicly available information or information generally known to professionals in the industry, and that Claimant [Bridgewater], a highly sophisticated entity, knew that the trade secrets as described did not constitute trade secrets.**

See Petition, Ex. 2 (Award at 17) (emphasis added). In addition to Bridgewater knowing that the information it alleged as “secrets” did *not* constitute trade secrets, the Tribunal found that Bridgewater manufactured false evidence regarding its alleged “secrets”:

We conclude that Claimant [Bridgewater] did not have a reasonable basis for filing its claims of misappropriation of trade secrets or disclosure of confidential information as to Squire or Minicone. **We conclude Claimant filed its claims in reckless disregard of its own internal records, and in order to support its allegations of access to trade secrets, manufactured false evidence.**

Id. at 17 (emphasis added). Beyond the finding there were no trade secrets, the Tribunal also found that Bridgewater withheld evidence regarding its supposed “secrets” in defiance of the Tribunal’s repeated orders:

Finally, Claimant [Bridgewater] continued to press its claims even after discovery and the Tribunal’s orders made it clear that Claimant’s refusal to provide models and complete PEDs [Plain English Documents] foreclosed the possibility of prevailing on its misappropriation claims. Claimant’s actions in continuing to press its claims constitute further evidence that its intentions were not to prove misappropriation, but rather, were to adversely affect Respondents’ ability to conduct a competitive business.

Id. at 17; *see also id.* at 19:

Bridgewater defied the Tribunal’s repeated orders to provide sufficient specificity for each of its alleged trade secrets to enable Respondents to determine what they were accused of misappropriating, thus making it impossible for experts and the Tribunal to compare Claimant’s actual methodologies with TCM’s methodologies. Claimant’s refusal supports a negative inference, *viz.*, that had the information been provided, it would have been obvious that Respondents’ methodologies were not the same as Claimant’s.

In sum, the Tribunal concluded that Bridgewater put no trade secrets at issue in the Arbitration. Accordingly, the Award does not discuss or refer to any trade secrets at all.

Not only did the Tribunal find that there were no trade secrets, but it concluded that Bridgewater's trade secret claims were brought in bad faith:

Claimant [Bridgewater] pursued the arbitration knowing that applicable securities rules and regulations would require [Squire and Minicone's fund] to disclose the pending dispute to prospective investors, and that such disclosure was likely to make prospective investors more wary of investing in the new competitor's fund. [Bridgewater] knew that its refusal to identify the alleged trade secrets with specificity would foreclose the possibility of proving its case, but would have the effect of extending the arbitration and making it difficult and expensive, both in dollars and compelling [Squire and Minicone] to take time away from the work of growing their (competitive) business, in order to defend against [Bridgewater's] allegations.

Claimant [Bridgewater]'s refusal to provide specificity may also indicate that doing so would have made absence of misappropriation obvious. We need not, however, rely on negative inference to support its conclusion that the case was brought in bad faith. By (i) ** Redacted **

, (ii) generating false evidence, (iii) refusing to provide sufficient specificity in order to permit experts to compare what Claimant and Respondents were doing, and (iv) continuing to press its case knowing that its refusal to provide the very information it insisted prehearing it needed from TCM (and during the arbitration in violation of the Tribunal's orders), Claimant foreclosed, by its own actions, its ability to prove misappropriation.

Id. at 18.³ The Tribunal then cited a litany of factual findings based upon testimony and evidence in support of its ruling that Bridgewater had maintained its trade secret claims against Minicone and Squire in bad faith. *Id.* at 18-20.

B. Petitioners' Employment Agreements

When Petitioners became employees of Bridgewater, they each signed employment agreements. *See* Petition, Ex. 3 (Demand at Exhibits A & C thereto). These employment

³ Petitioners have redacted testimony pursuant to the Confidentiality Order pending ruling on this motion.

agreements contain identical sections entitled “Mediation and Arbitration,” which specifies that Bridgewater and Petitioners agree that “all matters pertaining to [an] arbitration will be kept confidential including, but not limited to, the existence of the arbitration, any pleadings, briefs or other documents exchanged ... *except that such information may be disclosed as required by law or by Bridgewater for legitimate business purposes. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof and be enforced accordingly.*” *Id.* at p. 7 (emphasis added).

C. The Confidentiality Order

The Confidentiality Order negotiated by the parties and entered by the Tribunal defines Protected Material as “all Evidentiary Material, pleadings, submissions, filings, transcripts and orders in this Arbitration, or portions thereof.” Zeisler Aff. Ex. A at 2. “Evidentiary Material” is, in turn, defined as “all Documents and information produced or otherwise disclosed or used by the Parties in this Arbitration, and all testimony provided by a witness in this Arbitration, including any copies, summaries or derivations thereof.” *Id.* at 1.

Significantly, the Award does not constitute Protected Material under the Confidentiality Order. *See* Zeisler Aff., Ex. A (definition of Protected Material). Moreover, even though Protected Material is subject to limitations on disclosure, the Confidentiality Order expressly provides for the submission of Protected Material “to a court as reasonably necessary to enforce an award granted in the arbitration,” provided that the disclosing party provides the required notification before making such disclosure.⁴

⁴ Paragraph 2(c)(v) states as follows: “Nothing in this Order shall restrict in any way a Receiving Party’s right or ability to disclose or use Protected Material provided by the Producing Party if: the protected material is being submitted to a court or other governing body of appropriate jurisdiction as reasonably necessary to enforce or challenge an award granted in this Arbitration; provided, however, that such a Receiving Party must comply with the procedures for submitting Protected Material to a court or other governing body set forth below in Paragraph 4(b).” Paragraph 4(b) states: “Notwithstanding anything in this Order to the contrary, a Receiving Party may disclose Protected Material to a court as reasonably. Necessary to enforce an award granted in the Arbitration in accordance with Paragraph 2(c)(v)

D. The Petition

On July 1, 2020, Petitioners filed a Verified Petition pursuant to Article 75 of the New York Civil Practice Law and Rules (“CPLR”) seeking an order pursuant to CPLR 7510 confirming the Award. As required under New York law, Petitioners attached exhibits establishing the parties’ identity, the court’s jurisdiction, the parties’ agreement to arbitrate, the timeliness of the Award, and the Award itself. These exhibits are set forth here for ease of reference:

- Exhibit 1 – Interim Award
- Exhibit 2 – Final Award
- Exhibit 3 – Demand for Arbitration
- Exhibit 4 – Petitioners’ Answer and Counterclaims
- Exhibit 5 – Bridgewater’s Answer
- Exhibit 6 – Email confirming closing of arbitration record
- Exhibit 7 – Emails confirming extensions of time to render Award
- Exhibit 8 – Email enclosing Interim Award
- Exhibit 9 – Email confirming extensions of time to render Final Award
- Exhibit 10 – Email confirming extensions of time to render Final Award
- Exhibit 11 – Email enclosing Final Award

ARGUMENT

“It is well settled that the petition, memoranda, and other supporting documents filed in connection with a petition to confirm an arbitration award (including the Final Award itself) are judicial documents” not subject to sealing. *See Century Indem. Co. v. AXA Belgium*, No. 11 Civ. 7263, 2012 WL 4354816, at *13 (S.D.N.Y. Sept. 24, 2012) (quoting *Aioi Nissay Dowa Ins. Co. Ltd. v. ProSight Specialty Mgmt. Co., Inc.*, No. 12 Civ. 3274, 2012 WL 3583176, at *6 (S.D.N.Y.

above. Prior to making a disclosure authorized by this paragraph, such Receiving Party shall promptly notify the Producing Party of the Receiving Party’s intent to make the disclosure and afford the Producing Party fourteen (14) days from such notification to take appropriate action to seek safeguards for the confidentiality of the Protected Material for the purposes of such proceedings.” Petitioners have provided Bridgewater more than 14 days’ notice.

Aug. 12, 2012)). Moreover, “while parties to an arbitration are generally ‘permitted to keep their private undertakings [confidential],’ the ‘circumstance changes when a party seeks to enforce in [] court the fruits of their private agreement to arbitrate, i.e. the arbitration award.’” *Id.* at 14.

Additionally, the Award does not constitute Protected Material under the Confidentiality Order, which defines “Protected Material” to include “pleadings, submissions, filings, transcripts and orders in this Arbitration, or portions thereof,” as well as “all testimony provided by any witness in this Arbitration.” *See Zeisler Aff., Ex. A* at 2. This is with good reason: New York law is unequivocal that arbitration awards subject to motions to confirm or vacate must be publicly filed in the absence of separate justification for their sealing, such as the disclosure of trade secrets or sensitive business plans. Here, no such independent justification exists, especially given that the Tribunal found that “*the trade secrets as described*, constituted publicly available information or information generally known to professionals in the industry, and that Claimant [Bridgewater], a highly sophisticated entity, **knew that the trade secrets as described did not constitute trade secrets.**” Petition, Ex. 2 (Award at 17) (emphasis added).

I. THE LEGAL STANDARD FOR A SEALING ORDER

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 A.D.3d 345, 348 (1st Dep’t 2010). This presumption is rooted in the State’s long recognition that “civil actions and proceedings should be open to the public in order to ensure that they are conducted efficiently, honestly and fairly.” *Id.* The right of access to proceedings and court records “is also firmly grounded in common-law principles, and the existence of the correlating common-law right to inspect and copy judicial records is beyond dispute.” *Gryphon Dom. VI, LLC v. APP Intl. Fin. Co., B.V.*, 28 A.D.3d 322, 324 (1st Dep’t 2006) (internal quotations omitted).

As the First Department found in *Mosallem*:

This Court has generally been reluctant to allow the sealing of court records and has authorized sealing only in strictly limited circumstances (*Gryphon Dom. VI, LLC*, 28 AD3d at 324, 325). In the business context, we have allowed for sealing where trade secrets are involved (*see Matter of Crain Communications*, 135 AD2d at 352), or where the release of documents could threaten a business's competitive advantage (*see Matter of Twentieth Century Fox Film Corp.*, 190 AD2d 483, 488 [1993]). Here, however, there is no showing that the documents contain any trade secrets or other revelations that might harm Grey's competitive standing in the industry. Nor have defendants shown that the documents, most of which are more than 10 years old, would cause harm to Grey's present-day business.

Mosallem, 76 A.D.3d at 350-51. Moreover, in the Commercial Division of this Court, several Justices' Individual Practice Rules instruct that documents should not be sealed even if subject to a confidentiality agreement and that "[t]ypically, the Court will be interested in redacting only discrete passages containing potentially confidential information as opposed to the wholesale sealing." *See, e.g.*, Justice O. Peter Sherwood, *Practices and Procedures* (Revised April 2019),

Rule 9:

Please note that documents filed with the court will not be sealed merely on the ground that they are subject to a confidentiality agreement (*see Mosallem v Berenson*, 76 AD3d 345, 350 [1st Dept 2010]). Counsel should consult *MBIA Insurance Corporation v. Countrywide Home Loans, Inc.* (No. 602825/08, 2013 WL 450030 12013 NY Misc LEXIS 367 [Sup Ct New York County, January 3, 2013] ["MBIA Sealing Order II"]), *Mosallem* (76 AD3d at 348); and *Mancheski v Gabelli Group Capital Partners* (39 AD3d 499, 502 [2d Dep't 2007]) for instructions on limits imposed on sealing. Typically, the Court will be interested in redacting only discrete passages containing potentially confidential information as opposed to the wholesale sealing.

Federal courts in New York take the same approach. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006) (such "right of public access" is "firmly rooted in our nation's history"); *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995) ("The common law right of public access to judicial documents is said to predate the Constitution"). "Courts in this district have generally been loath to seal arbitration awards." *Istithmar World PJSC v. Amato*,

No. 12-cv-7473, 2013 WL 66478, at *3 (S.D.N.Y. Jan. 7, 2013); *see, e.g., Redeemer Comm. of Highland Credit Strategies Funds v. Highland Capital Mgmt., L.P.*, 182 F. Supp. 3d 128, 133 (S.D.N.Y. 2016) (“This weighty interest in public access applies with full force to documents filed in connection with a motion to confirm an arbitration award.”); *Global Reinsurance Corp.—U.S. Branch v. Argonaut Ins. Co. (Global II)*, No. 07-cv-8196, 2008 WL 1805459, at *2 (S.D.N.Y. Apr. 21, 2008) (“In circumstances where an arbitration award is confirmed, the public in the usual case has a right to know what the Court has done.”). As one court in the Southern District stated, it is difficult to contemplate how the arbitral award in particular could ever be considered a document that does not “directly affect[] the Court’s adjudication” of the recognition and enforcement petition. *Alexandria Real Estate Equities Inc. v. Fair*, No. 11-cv-3694, 2011 WL 6015646, at *2 (S.D.N.Y. Nov. 30, 2011). For this reason, the circumstances warranting a sealing order are narrowly circumscribed. *Schron v. Grunstein*, 977 N.Y.S.2d 670, 2013 WL 5493995, *3 (Sup. Ct., NY County, 2013). In fact, the First Department has been reluctant to allow the sealing of court records even where both sides to the litigation have asked for such sealing. *See, e.g., Gryphon Dom. VI, LLC*, 28 A.D.3d at 324.

In addition to a few limited statutory exceptions to public access (none of which are applicable here), a court is permitted to seal court records only for “good cause,” pursuant to 22 NYCRR § 216.1(a), which states in relevant part: “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.” 22 NYCRR § 216.1(a).

Although “good cause” is not further defined in Section 216.1(a), “[a] finding of ‘good cause’ presupposes that public access to the documents at issue will likely result in harm to a compelling interest of the movant.” *Mancheski v. Gabelli Group Capital Partners*, 39 A.D.3d 499, 502 (2d Dep’t 2007). In order to carry its burden, the movant must demonstrate a “sound basis or legitimate need to take judicial action.” *Danco Labs., Ltd. v. Chem. Works of Gedeon Richter, Ltd.*, 274 A.D.2d 1, 8 (1st Dep’t 2000) (internal quotation marks and citation omitted); *see also Mosallem*, 76 A.D.3d at 349 (“Confidentiality is clearly the exception, not the rule, and the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access”). In sum, “good cause boils down to the prudent exercise of the court’s discretion.” *Mancheski*, 39 A.D.3d at 502 (internal quotation marks and citation omitted); *see also Gryphon Dom. VI, LLC*, 28 A.D.3d at 324 (“a court is always required to make an independent determination of good cause before it may grant a request for sealing”); *Schron v. Grunstein*, 2013 WL 5493995, *2 (“Courts must narrowly tailor any sealing order to balance legitimate needs for secrecy with the public’s right to access”).

As the First Department has made clear, “neither the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records.” *Mosallem*, 76 A.D.3d at 351. Accordingly, arguments that sealing is warranted because a party will be damaged by the public filing routinely fail. *See, e.g., Global II*, 2008 WL 1805459, at *1 (refusing to seal arbitration awards despite “the risk that [disclosure] will impair [plaintiff’s] negotiating position with other reinsurers” and demanding proof of how “disclosure of any language in the awards would cause [the party] direct or immediate harm”).

Significantly, the existence of confidentiality agreements or orders does not sway courts sitting in New York to seal arbitration awards in the confirmation process. *See, e.g., Clearwater*

Ins. Co. v. Granite State Ins. Co., No. 15-cv-165, 2015 WL 13687223, at *2 (S.D.N.Y. Mar. 2, 2015) (order denying motion to seal documents) (“[C]ountervailing factors relying on private agreements between or expectations among the parties have little force when weighed against the interest of the public in monitoring the judicial function”); *Eagle Star Ins. Co. Ltd. v. Arrowood Indemnity Co.*, No. 13-cv-3410, 2013 WL 5322573, at *3 (S.D.N.Y. Sept. 23, 2013) (finding “the parties’ confidentiality agreement ... insufficient to demonstrate that sealing is necessary”); *Alexandria Real Estate Equities Inc. v. Fair*, No. 11-cv-3694, 2011 WL 6015646, at *3 (rejecting position that the rules of arbitration, which establish confidentiality protections, can overcome the First Amendment presumption of access); *Church Ins. Co. v. Ace Property & Casualty Ins. Co.*, No. 10-cv-698, 2010 WL 3958791, at *3 (S.D.N.Y. Sept. 23, 2010) (rejecting the position that the “mere existence of a confidentiality agreement” demonstrates that sealing is “essential to preserve higher values”); *Mutual Marine Office Inc. v. Transfercom Ltd.*, No. 08-cv-10367, 2009 WL 1025965, at *5 (S.D.N.Y. Apr. 15, 2009) (same).

As courts have consistently held, parties’ agreements to maintain the confidentiality of an arbitration award do not outweigh the interest of the public in monitoring the judicial review of awards. *See, e.g., Century Indem. Co. v. AXA Belgium*, No. 11-cv-7263, 2012 WL 4354816, at *14 (S.D.N.Y. Sept. 24, 2012) (determining that parties’ confidentiality agreement “is not binding upon the Court,” and “while parties to an arbitration are generally ‘permitted to keep their private undertakings [confidential],’ the ‘circumstance changes when a party seeks to enforce in federal court the fruits of their private agreement to arbitrate, i.e. the arbitration award”).

II. THE AWARD SHOULD BE PUBLICLY FILED AND THERE ARE NO TRADE SECRETS DISCLOSED THEREIN JUSTIFYING REDACTION

Exhibits 3, 4 and 5 (the pleadings in the Arbitration) are defined as Protected Material and arguably contain proprietary material warranting their filing under seal. *See, e.g., Exhibit 3,*

Demand (attaching investor materials). In contrast, the Interim and Final Award (Exhibits 1 and 2) are not Protected Material and contain no such proprietary or confidential information, and therefore must be publicly filed.

As the Tribunal made clear several times, the information Bridgewater claimed as its proprietary confidential materials were, instead, publicly available or generally known and did not constitute trade secrets:

[W]e find that the evidence presented establishes that the alleged trade secrets, that is, *the trade secrets as described*, **constituted publicly available information or information generally known to professionals in the industry, and that Claimant, a highly sophisticated entity, knew that the trade secrets as described did not constitute trade secrets.**

See Petition, Ex. 2 (Award at 17) (emphasis added). Similarly, the Tribunal ruled:

- Bridgewater knew or was reckless in not knowing that the descriptions of trade secrets and confidential information it provided disclosed no information beyond what was publicly available or generally available to professionals in the industry.
- Bridgewater knew or was reckless in not knowing that the alleged trade secrets, that is, *the trade secrets as described*, constituted publicly available information or information generally known to professionals in the industry.
- Bridgewater knew or was reckless in not knowing that that the trade secrets *as described* did not constitute trade secrets.

Id. at 19 (emphasis in original). Importantly, Bridgewater did not contest or move to vacate any of these findings above:

Bridgewater continues to believe that the arbitrators were mistaken and that it proved its trade secret and contract claims against Respondents. That error, however, is not the subject of this Petition. Bridgewater agreed to arbitrate those trade secret claims, and it accepts the panel's decision that both parties failed to meet their burdens of proof as to their respective claims.

BW's Opp. at 2; *see also id.* at 12 ("Bridgewater does not seek to vacate the Tribunal's decision concerning any claims that were legitimately at issue in the arbitration.").

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