

18-06/28/

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

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U.S. EXECUTIVE SECRETARIAT

**THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY
AUTHORITY'S RESPONSE TO MOTION TO COMPEL OF THE AD HOC GROUP OF
GENERAL OBLIGATION BONDHOLDERS, AMBAC ASSURANCE CORPORATION,
ASSURED GUARANTY CORP., ASSURED GUARANTY MUNICIPAL CORP., THE
MUTUAL FUND GROUP, AND NATIONAL PUBLIC FINANCE GUARANTEE
CORPORATION, AND REQUEST FOR ENTRY OF PROTECTIVE ORDER**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are: (i) the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) the Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) the Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) the Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) the Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.

The Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), hereby responds to the *Motion to Compel Compliance with February 26, 2018 Order and For Entry of a Protective Order of Ad Hoc Group of General Obligation Bondholders, Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., The Mutual Fund Group, and National Public Finance Guarantee Corporation* ECF No. 2865 (the “Motion”).

INTRODUCTION

The Motion is a thinly-veiled motion for reconsideration of the Court’s February 26, 2018 discovery order regarding the use of Fiscal Plan Development Materials and should be denied. In its prior order, this Court ruled “Movants have not shown good cause for the immediate use of the information, which would require the disclosure of many documents currently shared amongst the parties pursuant to protective orders and/or non-disclosure agreements.” ECF No. 2590 (“Order”) at 11.² The Court left the issue of appropriate confidentiality restrictions regarding such material for a future date, holding that “while Movants may attempt to use the Fiscal Plan Development Materials in the Title III or adversary proceedings, Respondents are not prejudiced from objecting to that use on a document by document basis. Such objections may include the necessity of keeping a particular protective order in place.” *Id.* In other words, the Court *denied* Movants’ request for immediate use in litigation, subject to Movants’ right to seek to use the subject material in the future and Respondents’ right to oppose such use.

² “Movants” are the Ad Hoc Group of General Obligation Bondholders, Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., the Mutual Fund Group, and National Public Finance Guarantee Corporation. “Respondents” are AAFAF, the Commonwealth of Puerto Rico (the “Commonwealth”), as a Title III Debtor, by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Commonwealth’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), and the Oversight Board.

Movants completely overlook this fundamental aspect of the Court's order, insisting the Order stripped confidentiality protections from virtually all the materials Respondents have provided, including information Respondents have provided to Movants in the Data Room and through mediation. *See* Motion, Ex. C, ECF No. 2865-3.³ The Court did no such thing, and its carefully considered balancing of the rights of the parties as embodied in the Order cannot be so cavalierly ignored. Movants have not shown good cause to disregard confidentiality and obtain authority to use information however they wish, or provided a compelling reason to grant the relief they seek, let alone prior to a document-by-document review and their Motion should be denied.

Some of Movants' arguments are simply recycled from prior pleadings this Court rejected. Confidentiality restrictions should be eliminated, they contend, because Movants want to show Data Room materials to litigation experts. *See* Motion, ECF No. 2865, at 5, n.4. But this Court already found that Movant's bare references to expert discovery, untethered to any pending litigation deadline, did not constitute good cause to lift the Data Room confidentiality restrictions. *See* Order, ECF No. 2590 at 11. Movants also want to show currently nonpublic information to trading principals of their clients without the need for those individuals to sign an NDA or the mediation agreements. Motion, ECF No. 2865 at 8. But Movants' clients can easily sign these agreements; parties do in virtually every major restructuring case if they want to participate in settlement discussions or otherwise receive sensitive financial information. And if Movants' clients wish to maintain trading optionality, they can easily abide by procedures for

³ Though Movants' brief asks the Court to "compel production" of certain Fiscal Plan Development Materials, this is a misnomer: Respondents have given Movants access to *all* these materials already. The disputed issue is the level of confidentiality those materials should be afforded.

screening non-public information that creditors routinely implement in bankruptcy cases. *See In re Washington Mut., Inc.*, 461 B.R. 200, 266 (Bankr. D. Del. 2011), vacated in part on other grounds, No. 08-12229 MFW, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (explaining “creditors who want to participate in settlement discussions in which they receive material nonpublic information about the debtor must either restrict their trading or establish an ethical wall between traders and participants in the bankruptcy case” since “[t]hese types of restrictions are common in bankruptcy cases” and “a requirement to restrict trading or create an ethical wall in exchange for a seat at the negotiating table” does not “place[] an undue burden on creditors who wish to receive confidential information and give their input.”).

Finally, this Court should not grant Movants’ requested protective order, which unreasonably risks waiver of confidentiality protections over certain material. Respondents have proposed a protective order, attached hereto as Exhibit A, which preserves the confidentiality of Data Room documents unless the parties agree or the Court orders otherwise. If the Court enters any protective order, it should use this version instead of that urged by Movants.

BACKGROUND

On December 22, 2017, the Parties submitted a Joint Report identifying only two disputes remaining for resolution: (1) the applicability of the deliberative process privilege; and (2) the confidentiality restrictions that should apply to materials made available to Movants through the Data Room. ECF No. 2154. Over the course of litigating these disputes, Movants conceded that Respondents posted to the Data Room “information sufficient to respond to the requests for Fiscal Plan Development Materials relating to the 2017 Plan,” and that Respondents have agreed to provide the Fiscal Plan Development Materials in connection with the 2018 plan once it is certified. *See* Order, ECF No. 2590, at 6-7. On February 26, 2018, this Court held that

pre-decisional Fiscal Plan materials were privileged, subject to a categorical logging requirement,⁴ and that Movants had not shown good cause to strip the Fiscal Plan Development Materials from the confidentiality protections in the NDAs and mediation agreements. *See* Order, ECF No. 2590.

The Order stated:

Having ruled that the documents fall within the scope of Rule 2004, this Court nonetheless holds that *Movants have not shown good cause for the immediate use of the information, which would require the disclosure of many documents currently shared amongst the parties pursuant to protective orders and/or non-disclosure agreements.*

Order, ECF No. 2590 at 11 (emphasis added). The Court considered Movants' request for immediate use of Fiscal Plan Development Materials to prepare a challenge to the eventual plan of adjustment, and rejected it:

The Movants have only asserted that they may need to use the materials in connection with the cross-examination of experts or other challenges to an eventual plan of adjustment. No timetable for such potential use has been provided. As a result, this Court orders that while Movants may attempt to use the Fiscal Plan Development Materials in the Title III or adversary proceedings, Respondents are not prejudiced from objecting to that use on a document-by document basis. *Such Objections may include the necessity of keeping a particular protective order in place.*

Id. (emphasis added)

The Order also recognized that “deciding what material in the Data Room should be released from their confidentiality restrictions may involve a lot of unnecessary work since the Movants may not be seeking to use much of the material.” *Id.* To avoid this problem, the Court ordered the parties to follow a procedure mirroring Section I(a) of the Parties' Joint Report. *Id.* at 11-12. Section I(a) states that Respondents will identify Data Room materials that consist of

⁴ Several of the Movants filed Objections to this ruling. ECF No. 2707. Consistent with the Court's order, Respondents served extensive categorical privilege logs on April 6, 2018.

data or factual information that they agree may be used in litigation, subject to a protective order.

Joint Report, ECF No. 2154 at 2.⁵

Meet and Confer

Instead of following the Court-ordered procedure, Movants sent a letter on February 27, 2018, claiming the Order required Respondents to lift the NDA and mediation confidentiality restrictions from every single document in the Data Room folder housing diligence materials relating to the central Government, and over eighty percent (153 of 184) of the documents the Commonwealth had given its creditors through mediation to date. *See* Motion, ECF No.2865, Ex. C 2865-3. The letter also reserved the Commonwealth's creditors' right to send additional demands for the release of confidentiality restrictions from instrumentality-specific documents, and additional documents exchanged through mediation. *Id.*

On March 1, 2018, consistent with the Order and Section I(a) of the Joint Report, Respondents provided Movants with a list of Data Room documents and folders that, as of the date of this filing, includes 122 Data Room documents that Respondents determined constitute "data or factual information" responsive to the Joint Requests, and agreed that these documents, along with the thousands of documents produced in adversary proceedings, may be used for

⁵ The entirety of the paragraph reads as follows:

The Parties agree that, subject to the entry of a protective order, data or factual information produced in the Data Room will be produced or deemed produced pursuant to the 2004 Requests Nos. 1 through 7, 11, 14 and 15. Movants may attempt to use such produced information in the Title III or adversary proceedings and Respondents reserve and do not waive any objection to such future use. Respondents will provide Movants with a schedule of materials in the Data Room that they in good faith determine to be data or factual information within the meaning of this paragraph.

litigation purposes, subject to the entry of a protective order. Motion, Ex. E, ECF 2865-5.⁶

Respondents also agreed to meet and confer with Movants regarding potentially lifting NDA or mediation confidentiality restrictions over additional materials, to the extent Movants could articulate a current need to lift the restrictions. *Id.*

The GO Group responded on March 7, 2018, reasserting that the Order stripped all Data Room materials that Movants contend are responsive to the Joint Request from the NDA and mediation confidentiality restrictions. Motion, Ex. D, ECF 2865-4. Notwithstanding this claim, the letter also included an appendix listing 65 specific documents for which Movants sought a release of Data Room confidentiality restrictions. *Id.* Respondents reviewed these 65 documents, and in a letter dated March 12, 2018, agreed that 15 of them consisted of “data or factual information” that could be used in litigation, subject to a protective order, and notified the Movants that one of the documents on the list was already publicly available. *See* Motion, Ex. F, ECF 2865-6. This brings the total number of Data Room documents for which Respondents agreed to modify the Data Room confidentiality restrictions to date to 137. *See id.* Exs. E-F, ECF Nos. 2865-5, 2864-6. Another 11 documents from the appendix consisted of materials concerning the Puerto Rico Highways & Transportation Authority (“HTA”) that were provided to HTA’s creditors in mediation. Respondents requested to meet and confer to discuss the basis for the Commonwealth creditors’ request for these documents. Motion, Ex. F at 3, ECF No. 2865-6. The remaining 37 documents consisted of projections and models underlying the Commonwealth Fiscal Plan certified on March 13, 2017 (31 documents), and certain materials underlying the in-development 2018 Fiscal Plan that were shared with creditors as part of the

⁶ Respondents clarified that they do not assert confidentiality over publicly available materials that they had compiled in the Data Room for creditors’ convenience.

mediation process (6 documents). With respect to these 37 documents, Respondents noted, as this Court held, that Movants had not shown good cause for release of these materials, but invited Movants to have their experts and clients sign NDAs and mediation agreements to facilitate their access to those materials. *Id.*

Movants never responded to the March 12 letter, and instead filed the instant Motion nearly a month later on April 9, 2018.

Protective Order

The Parties have been exchanging protective order drafts since January. The only point in contention is whether the materials Respondents have made available solely through the Data Room, subject to NDAs and mediation agreements, should be presumed to be “Confidential” under a litigation protective order in the event they are released from the data room restrictions. *See* Ex. B (redline of competing drafts). Respondents’ draft states that such materials would remain “Confidential” unless the Parties agree, or the Court orders otherwise. *See* Ex. A, ¶ 8. Movants’ draft assumes all Data Room confidentiality restrictions were lifted by the Order, and would require Respondents to re-designate responsive Data Room materials as “Confidential” under the protective order within five business days of its entry, or else risk waiver of all confidentiality protections. *See* Motion, Ex. A, ¶ 8, ECF No. 2865-1. Respondents’ draft makes no accommodation for materials subsequently posted in the Data Room, or for materials provided through mediation. *Id.*

The Motion

The Motion badly misrepresents the meet and confer process to try to convince the Court that Respondents have not complied with the Order. For instance, the Motion repeatedly claims Respondents have not produced any Fiscal Plan Development Materials. This is false.

Respondents have received Fiscal Plan Development Materials through the Data Room.

Respondents have further identified 137 Data Room documents, and the thousands of documents produced in adversary proceedings, that will be made available subject to a protective order.

Respondents have also offered to make the Data Room materials available to Movants' experts and clients if they sign the Data Room confidentiality agreements. *See* Motion, Exs. E-F, ECF Nos. 2865-5, 2865-6.

The Motion seeks to compel Respondents to release 46⁷ documents from the Data Room confidentiality restrictions. Motion, Ex. B, ECF No. 2865-2. Movants claim they need the Data Room confidentiality restrictions lifted from these materials so that they can show them to expert witnesses and principals of their clients who are subject to trading restrictions. Motion at 5, n.4 & 8. Movants did not discuss 9 of these 46 documents with Respondents before filing the Motion⁸—and 6 of those 9 are already available to Movants outside the Data Room.⁹

The 40 documents that remain at issue consist of projections and models underlying the obsolete 2017 Fiscal Plan (31 documents) and models and analyses underlying drafts of the in-development 2018 Fiscal Plan that were disclosed through mediation (9 documents). All the 2017 Fiscal Plan materials have been superseded. The 2018 Fiscal Plan materials were shared with creditors on a confidential basis in mediation to facilitate voluntary resolution of disputes;

⁷ Items 4 and 8 in Movants' list of 47 are duplicates.

⁸ These are items 20, and 40-47 of Exhibit B to the Motion. Item 20 was uploaded to the Data Room on June 26, 2017. Items 40-47 were uploaded on March 9, 2018, in connection with mediation.

⁹ Item 41 is publicly available at https://data.femadata.com/FIMA/NHRAP/Maria/HurricaneMaria_ARA_InitialRun.pdf. Items 42-44 are duplicates of documents that Respondents already agreed to make available subject to a litigation protective order in their March 12 letter. The information in items 45 and 46 was published as part of the draft Commonwealth Fiscal Plan that the Governor submitted to the Board on April 5, 2018. *See* <http://www.aafaf.pr.gov/assets/newfiscalplanforpuerto-rico-2018-04-05.pdf>, slide 185.

much of which has been partially or entirely superseded. Now that the Oversight Board has certified the 2018 Commonwealth Fiscal Plan, AAFAF agrees to provide backup materials in its possession, custody, and control for the certified Fiscal Plan subject to a litigation protective order. In addition, many of these materials underlying both the 2017 and 2018 Fiscal Plans were prepared by financial advisors, and contain “trade secret or confidential research, development, or commercial information” that is not appropriate for public disclosure. *See* 11 U.S.C. § 107(b)(1).

ARGUMENT

I. MOVANTS HAVE NOT DEMONSTRATED GOOD CAUSE TO STRIP DATA ROOM RESTRICTIONS FROM FISCAL PLAN DEVELOPMENT MATERIALS.

This Court has already held, “Movants have not shown good cause for the immediate use of the information, which would require the disclosure of many documents currently shared amongst the parties pursuant to protective orders and/or non-disclosure agreements.” Order at 11, ECF No. 2590. Nothing has changed: Movants do not even try to establish the good cause this Court found lacking on February 26. Rather, they insist the Order means something other than what it says, and insist the Order stripped away the applicable confidentiality provisions governing particular documents. Motion at 5-7, ECF No. 2865. In the alternative, Movants claim they need confidentiality restrictions immediately lifted because they would like to show Data Room materials to retained litigation experts without use restrictions and to principals of their clients without compromising their ability to trade. *Id.* at 5, n.4 & 8. Neither constitutes good cause to immediately lift Data Room confidentiality restrictions.

This Court has already considered and rejected Movants’ claim that they need to immediately use the Data Room materials for use with experts. *See* Order at 11, ECF No. 2590. If Movants seek to use Data Room materials for litigation to challenge an eventual plan of

adjustment, this Court already ruled that such use is premature at this time. *See id.* (rejecting argument for immediate use of Data Room materials because “no timetable for such potential use has been provided”). Nothing has changed in this regard since February 26. No plan of adjustment has been proposed, and no timetable has been set for doing so. And Movants offer no support whatsoever for their suggestion that their desire to share nonpublic information with trading principals justifies stripping confidentiality protections. Consistent with the accepted approach in bankruptcy cases, Respondents have offered to make the Data Room materials available to Movants’ principals, if they sign the confidentiality agreements governing those materials. *See* Motion, Ex. F at 3, ECF No. 2865-6. That these principals want to both review these materials and preserve their ability to trade does not change the confidential nature of these documents, nor does it provide any reason for the Court to deviate from the accepted approach courts take in such situations. *See In re Washington Mut., Inc.*, 461 B.R. at 266 (Bankr. D. Del. 2011), (explaining that it is generally accepted that creditors “restrict trading or create an ethical wall in exchange for a seat at the negotiating table”).

Nor is it surprising that Movants have not articulated good cause, as there is none. The 2017 Fiscal Plan Development Materials, 31 of the 40 documents at issue, are stale in light of the complete overhaul of the Commonwealth Fiscal Plan following Hurricane Maria and will not become the basis of any plan of adjustment.

Nor could Movants articulate good cause to strip the 9 documents pertaining to drafts of the 2018 Fiscal Plan from the confidentiality restrictions in the mediation agreements. The 2018 materials were provided in mediation only as a good faith attempt to continue ongoing confidential negotiations. These documents have since been superseded, and, AAFAF will make the backup materials in its possession, custody or control for the certified 2018 Fiscal Plan

available, subject to a litigation protective order. Movants simply cannot justify undermining the mediation process by stripping mediation materials from the confidentiality protections afforded to those negotiations for an unspecified immediate use.

II. THE COURT SHOULD ENTER RESPONDENTS' PROTECTIVE ORDER.

The single point in dispute with respect to the protective order is whether Data Room materials responsive to the Rule 2004 requests, which are currently subject to nondisclosure or mediation agreements, should enjoy a presumption of confidentiality under the protective order. Ex. B (redline of protective order drafts).

Specifically, Respondents have proposed a protective order that states that documents uploaded into the Data Room would remain presumptively Confidential, under either the Data Room confidentiality agreements or the protective order, unless Respondents agreed otherwise in writing, or the Court so ordered. *See* Ex. A (Respondents' proposed protective order). The Respondents' proposed protective order also provides that Movants may designate materials from the Data Room they believe should be released from the Data Room restrictions (in addition to those materials that Respondents already released), and that the parties would meet and confer on any dispute before seeking court intervention. *Id.* Movants instead ask this Court to enter a protective order that would require Respondents to identify all potentially responsive documents in the Data Room, including materials shared through mediation, and reproduce them with a confidentiality stamp within five business days of entry of the Order, otherwise the documents would no longer be deemed confidential. Motion, Ex. A, ¶ 8, ECF 2865-1. The Movants' proposed protective order provides no mechanism for designating materials subsequently uploaded to the Data Room, including mediation materials that may be deemed responsive to the Rule 2004 requests. *Id.*

Contrary to Movants' assertion, Respondents' proposed protective order does not reflect a refusal to make confidentiality determinations on a document-by-document basis. *Cf.* Motion at 8, ECF No. 2865. The decision to share non-public materials solely through the Data Room reflects a determination that those materials warrant confidential treatment.¹⁰ When AAFAF determines that information pertaining to the Commonwealth's financial condition or to the development of the Fiscal Plans is not confidential, it publishes that information. *See* ECF 1928 (cataloging extensive publicly available materials responsive to the Joint Requests). For instance, AAFAF publishes weekly reports showing inflows and outflows of the Government's principal bank account, and monthly cash account balance updates for its other accounts.¹¹ AAFAF also publishes the Fiscal Plan drafts the Governor has submitted to the Oversight Board, and the Oversight Board also publishes the results of its reviews of those drafts.¹²

It is entirely proper to request that the materials shared through the Data Room be treated as confidential under a litigation protective order, unless the parties agree or the Court orders otherwise. The Data Room materials at issue here consist of projections and models underlying the obsolete 2017 Fiscal Plan and drafts of the 2018 Fiscal Plan. The vast majority of these documents have been superseded, either as a result of the impact of the Hurricanes, or as the result of refinements and revisions of the 2018 Fiscal Plan. Courts have recognized that the Government has an interest in limiting the dissemination of materials that do not reflect a final policy determination, or for which disclosure would confuse the public as to what the

¹⁰ In some cases Respondents have compiled materials that are publicly available in Data Room folders to assemble them for the convenience of the creditors. Respondents have already made clear they do not claim that materials available outside the Data Room are subject to the Data Room restrictions. Motion Ex. E at 2. ECF 2865-5.

¹¹ *See* <http://www.aafaf.pr.gov/documents.html#otherdocumentspin>

¹² *See* <http://www.aafaf.pr.gov/documents.html#fiscalplanspin>;
<https://juntasupervision.pr.gov/index.php/en/documents/>

Governments' position is. *See New Hampshire Right to Life v. U.S. Dept. of Health and Hum. Services*, 778 F.3d 43, 52 (1st Cir. 2015) (recognizing deliberative process privilege as a mechanism to protect government's interest "preventing confusion among the public" that could result from public disclosure). In addition, some of these materials contain proprietary information belonging to third-party consultants for which confidential treatment is entirely appropriate. *See* 11 U.S.C. § 107(b)(1) ("On request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information"); Fed. R. Bankr. P. 9018 (to same effect). Moreover, materials concerning the 2018 Fiscal Plan were shared within the confines of mediation. Entering Movants' proposed protective order, which puts mediation materials at risk of a waiver of confidentiality, would undermine the mediation efforts.

CONCLUSION

For the reasons stated above, AAFAF respectfully requests that the Court deny the Motion, and enter the proposed protective order, attached hereto as Exhibit A.

Dated: April 23, 2018
San Juan, Puerto Rico

Respectfully submitted,

/s/ Peter Friedman

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

[PROPOSED] PROTECTIVE ORDER

WHEREAS, Respondents the Commonwealth of Puerto Rico (the “Commonwealth”), the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) (collectively, “Respondents” and with Movants, “Parties”) possess confidential, proprietary, and commercially sensitive information that Respondents will disclose to Movants the Ad Hoc Group of General Obligation Bondholders (“GO Group”), Assured Guaranty Corp. (“AGC”), Assured Guaranty Municipal Corp. (f/k/a Financial Security Assurance Inc.) (“AGM” and, together with AGC, “Assured”), the Mutual Fund Group, and National Public Finance Guarantee Corporation (“National”) (collectively “Movants” and with Respondents, “Parties”), in connection with an

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III Case numbers are listed as bankruptcy case numbers due to software limitations). (Title III Case numbers are listed as bankruptcy case numbers due to software limitations).

Order Authorizing Examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (“Rule 2004”) dated December 15, 2017, and that Respondents also may need to disclose to Movants in connection with future orders authorizing examination pursuant to Rule 2004;

WHEREAS, the Court finds good cause to enter this Protective Order (“Order”) pursuant to Rule 26 of the Federal Rules of Civil Procedure, made applicable to this Title III proceeding by Rule 7026 of the Federal Rules of Bankruptcy Procedure, to facilitate discovery in the Title III proceeding while protecting such confidential information from improper disclosure and use; and

IT IS HEREBY ORDERED as follows:

DEFINITIONS

1. “Material” shall mean and refer to all documents and electronically stored information, within the meaning of Fed. R. Civ. P. 34, made applicable to this Title III proceeding by Rule 7034 of the Federal Rules of Bankruptcy Procedure, as well as any deposition testimony, deposition exhibits, interrogatory responses, responses to requests for admission, responses to production requests, responses to deposition on written questions and other written, recorded, electronic, or graphic materials produced or made available by any Respondent or non-party, as well as any information contained in any of above items.

2. “Confidential” or “Confidential Material” shall mean and refer to any Material produced by any Respondent or non-party (each referred to herein as a “Producing Party”) that the Producing Party considers in good faith to contain commercial, financial, trade secret, research and development, or personal information of a proprietary nature that is not known to, or has not generally been made available to, the public or other information the disclosure of which, in the good faith judgment of the Producing Party, would be detrimental to the conduct of the Producing Party’s business or official functions.

3. “Qualified Persons” shall mean and refer to:

- (a) Employees of the Parties and their affiliates, House Counsel, Outside Counsel of Record for each Party and their paralegals and other professional personnel including support and IT staff to whom disclosure of information is necessary for the litigation of this Title III proceeding;
- (b) testifying or consulting experts retained by any Party and their associates or other professional personnel including support and IT staff, and consultants to the Parties and their affiliates to whom disclosure of information is necessary for the litigation of this Title III proceeding;
- (c) any mediator retained by the parties or appointed by the Court in this Title III proceeding and employees of such mediator who are assisting in the conduct of the mediation;
- (d) deposition witnesses;
- (e) the Court and all persons assisting the Court in this Title III proceeding, including law clerks, court reporters, translators, and clerical personnel;
- (f) translators and outside litigation support vendors (including commercial copying and imaging services, vendors assisting with electronic discovery matters, and trial consultants) retained by a Party in connection with this Title III proceeding;
- (g) persons who are authors, addressees, and recipients of documents containing Confidential Material to the extent they have previously had lawful access to such documents; and
- (h) professional court reporters and their staff engaged to transcribe testimony in this Title III proceeding.

4. “House Counsel” shall mean and refer to attorneys who are employees of a Party or an affiliate of a Party.

5. “Outside Counsel of Record” shall mean and refer to attorneys who are not employees of a Party but are retained to represent or advise a Party and have appeared in this matter on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that

Party, or contract or temporary attorneys who have been retained, through an agency or directly, by a law firm which has appeared on behalf of a Party.

SCOPE AND INTERPRETATION OF THIS ORDER

6. This Protective Order shall be applicable to, and shall govern, all Material produced and disclosed pursuant to a Rule 2004 examination in the above titled Title III proceeding, and shall remain in effect until further order of the Court. The protections conferred by this Protective Order cover not only Confidential Material, but also (1) any information copied or extracted from Confidential Material; (2) all copies, excerpts, summaries, or compilations of Confidential Material; and (3) any testimony, conversations, or presentations by Parties or their counsel that might reveal Confidential Material. Issues relating to the use of Confidential Material may be revisited by the Parties and the Court in advance of any evidentiary hearing or trial in this Title III proceeding.

7. All Material, including, but not limited to, Confidential Material produced in this Title III proceeding, shall be used only in connection with this proceeding, and not for any other business, competitive, personal, private, public, or other purpose whatsoever. This Protective Order shall be binding on the Parties to this Title III proceeding and their successors, parents, subsidiaries, divisions, affiliates, employees, officials, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

DESIGNATION OF CONFIDENTIAL MATERIAL

8. Any Respondent or non-party may designate any Material as Confidential Material by affixing the legend "CONFIDENTIAL" to each item satisfying the definitions set forth above. For the avoidance of doubt, Material that Respondents have uploaded to the Intralinks Data Room (the "Data Room Material") is subject to Nondisclosure Agreements and, in the case of Material provided in connection with mediation, Rule 408 of the Federal Rules of Evidence and

the mediation agreements (collectively, the “Data Room Restrictions”). Movants may request in writing that certain Data Room Material be subject to the terms of this Protective Order, rather than the Data Room Restrictions. Any such request must identify the affected Material by location (folder or document number) in the Data Room, and Movants must give Respondents at least five (5) business days to respond. Thereafter, the Parties shall meet and confer in an attempt to resolve any dispute without Court intervention. If any Data Room Material is made subject to this Protective Order, whether by agreement of the Parties or by Court order, such material will be deemed to constitute Confidential Material subject to this Order without the need to affix any additional marking or designation, unless Movants agree in writing or the Court orders otherwise.

9. If a Respondent or non-party elects to make Confidential Material available for inspection, the producing party need not mark the Material in advance of any such inspection, but instead, if items are selected for copying, may affix the labels to the selected items at that time. All Confidential Material inspected, but not copied, is to be treated as Confidential.

10. Where a Respondent or non-party produces electronic files in native electronic format, such electronic files and documents may be designated for protection under this Protective Order by appending to the file names or designators information indicating whether the files contain Confidential Material, or by any other reasonable method for appropriately designating such information produced in electronic format, including by making such designations in reasonably accessible metadata associated with the files. Where Confidential Material is produced in electronic format on a disk or other medium that contains exclusively Confidential Material, the “CONFIDENTIAL” designation may be placed on the disk or other medium. When electronic files or documents in native form are printed for use at deposition, in a court proceeding, or for provision to any Qualified Person in accordance with the terms of this

Protective Order, the Party printing the electronic files or documents shall affix a legend to the printed documents saying "CONFIDENTIAL" and include the production number and designation associated with the native file. For the avoidance of doubt, Data Room Material made available subject to this Protective Order pursuant to Paragraph 8 shall be treated as Confidential Material without the need for any additional designation.

11. Whenever discovery is sought from a non-party, a copy of this Protective Order shall accompany the discovery request or subpoena. Any non-party producing Materials pursuant to a subpoena or otherwise ("Third-Party Material") may also designate items as being Confidential at the time of production, and such designation will have the full effect given to such labels by this Protective Order. If any Party chooses to challenge a non-party's designation of Third-Party Material as "Confidential" under the procedures set forth in paragraph 15, the producing non-party, or the other Party, may oppose that challenge. However, nothing herein shall be deemed to permit non-parties to review or obtain any documents or things designated as Confidential by any Party other than in accordance with paragraphs 16-17.

12. In the case of deposition testimony and related exhibits, any Party may designate portions of the transcript (including exhibits) Confidential by making a statement to that effect on the record during the course of the deposition, or by written notice to the other Party within thirty (30) days after receipt of the transcript; provided that the entire deposition transcript shall be treated as Confidential prior to each Party's designation or the expiration of the 30-day period, whichever comes first. If the designation is made during the course of the deposition, or if a witness believes an answer will require him to divulge Confidential Material, or if the attorney taking the deposition believes that the question will divulge Confidential Material, all persons not permitted access to such Confidential Material under the terms of this Protective Order shall be

excluded from the deposition room and the designating party shall instruct the court reporter to place the legend "CONFIDENTIAL" on the pages containing that information and to place on the cover of the transcript the legend "CONTAINS CONFIDENTIAL MATERIALS." Where the designation is made after receipt of the transcript, each Party shall be responsible for marking the designated transcripts with the appropriate legend, as instructed by the designating Party.

13. The failure to designate Material as Confidential shall not be deemed a waiver in whole or in part of the claim of confidentiality. Upon prompt notice from the producing Party of such failure to designate, the receiving Party shall cooperate to restore the confidentiality of the Confidential Material. No Party shall be held in breach of this Protective Order if, prior to notification of such later designation, such Confidential Material had been disclosed or used in a manner inconsistent with such later designation. The producing Party shall provide substitute copies bearing the corrected designation. The receiving Party shall return or certify the destruction of the previously undesignated Material.

14. Inadvertent production of information that is subject to the attorney-client privilege, deliberative process privilege, or work-product immunity does not waive any privilege or immunity if a request for return of such documents or information is made promptly after the producing Party learns of its inadvertent production. A Party receiving a request for the return of inadvertently produced documents shall promptly return the inadvertently produced documents to the producing Party and destroy all remaining copies of the inadvertently produced documents, including electronic, paper, and other copies.

15. This Protective Order shall not foreclose any Party from seeking a ruling from the Court that a Party (or non-party) has improperly designated Material (or Third-Party Material) as Confidential Material. If a Party believes documents have been inappropriately

labeled as Confidential, it shall identify with particularity the document(s) or information that it contends should be designated differently and state the grounds for each objection with particularity. Thereafter, the Parties (or Party and non-party) shall meet and confer in an attempt to resolve the dispute without Court intervention within five days of receipt of the written list of challenged documents. If the dispute cannot be resolved, the objecting Party may file with the Court a "Motion to Remove Confidential Designation." The Party (or non-party) asserting confidentiality shall have the burden of establishing that the information should be protected from disclosure. Except as otherwise permitted under this Order, no Party shall disclose any Material labeled Confidential unless and until there is an order from the Court ordering the designation to be removed.

TREATMENT OF CONFIDENTIAL MATERIAL

16. The substance or content of Confidential Material, as well as copies, notes and memoranda relating thereto, shall not be disclosed or made available to anyone other than Qualified Persons identified in paragraph 3(a) – (h), and no person shall disclose such information to those Qualified Persons identified in paragraph 3(b), (d), (f), or (h) herein without furnishing to such person a copy of this Protective Order and obtaining from that person an executed Confidentiality Agreement, the form of which is set forth in Exhibit A. Notwithstanding the foregoing, prior to the entry of this Protective Order by the Court, Confidential Material may be shown to a Qualified Person identified in paragraph 3(b), (d), (f), or (h) if such person is shown a draft of this Protective Order and agrees to be bound by its terms. Such person must promptly execute a Confidentiality Agreement once this Protective Order is entered by the Court.

17. If any Qualified Person permitted access to Confidential Material receives a subpoena or documentary demand that encompasses any Confidential Material produced pursuant to this Protective Order, that Qualified Person shall object thereto and provide prompt

written notice to the Party or non-party who originally produced the Confidential Material. If any Material designated as Confidential is disclosed, through inadvertence or otherwise, to anyone not authorized under the terms of this Protective Order, then the person inadvertently disclosing the Confidential Material shall use his or her best efforts to bind the recipient to the terms of this Protective Order. Such person shall be informed promptly of all the provisions of this Protective Order, identified to the non-disclosing Party, and requested to execute a Confidentiality Agreement the form of which is set forth as Exhibit A.

18. Any Confidential Material filed with or otherwise submitted to the Court shall be filed or submitted under seal consistent with the local rules for the United States Bankruptcy Court for the District of Puerto Rico, and any case management procedures governing this Title III proceeding. Any motion to file material under seal must include information sufficient to demonstrate that the sealed filing is warranted despite the First Amendment and common law rights of access to judicial documents. If any Confidential Material is used in any court proceeding, it shall not lose its designation through such use, and the Parties shall take all steps required to protect the confidentiality of the Confidential Material during such use, including but not limited to designating the portions of the hearing transcript concerning such Material as Confidential.

19. The restrictions imposed by this Protective Order may be modified or terminated only by written stipulation of the Parties or by order of the Court. This Protective Order shall not prevent any Party or non-party from seeking additional protective orders, or from seeking relief, including injunctive and/or other equitable remedies, or from asserting evidentiary objections, in a court of competent jurisdiction to prevent the disclosure or use of Confidential Material. This Court shall retain full and exclusive jurisdiction during the pendency of this case and thereafter to enforce this Protective Order and to grant relief for any violation thereof. All

signatories of Attachment A hereto explicitly consent to the jurisdiction of this Court for such purposes.

20. Nothing herein shall be construed as (a) preventing any Party from continuing to use any Material in the public domain or that subsequently becomes a part of the public domain other than as a result of any act of such Party or of disclosure in violation of this Protective Order; (b) limiting a Party's use or disclosure of its own information designated as Confidential; (c) preventing the disclosure of Confidential Material with the consent of the designating Party or non-party; or (d) preventing a Party from continuing to use any information or Material that it had the right to use and which was obtained independently of disclosure in this Title III proceeding.

21. Nothing herein shall be deemed to be a limitation upon, or a waiver of, the rights of the Parties or any objections the Parties may have, under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Federal Rules of Evidence.

RETURN OF CONFIDENTIAL MATERIALS

22. At the conclusion of this Title III Proceeding, by way of final judgment, settlement or otherwise, including all appeals, all Confidential Material, along with all copies, summaries and compilations thereof (except documents filed with the Court, depositions transcripts, and work product) shall be (a) returned to counsel for the designating Party or non-party; or (b) destroyed (and certified by affidavit as having been destroyed) by counsel for the Party in possession thereof. If any person is unable to destroy or return the Confidential Material upon reasonable effort, or is prevented from destroying or returning such Material due to operation of law, this requirement shall be excused; however, all other duties with respect to the confidentiality of this Material shall remain in effect. At the conclusion of this Title III proceeding,

the provisions of this Protective Order shall continue to be binding upon all persons subject to this Protective Order.

SO ORDERED.

Dated: April ____, 2018

/s/
JUDITH GAIL DEIN
United States Magistrate Judge

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Debtors.²

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

CONFIDENTIALITY AGREEMENT

I, _____, state that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____.

_____.

4. I have received a copy of the Protective Order entered in the above-entitled action
on _____.

² The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III Case numbers are listed as bankruptcy case numbers due to software limitations). (Title III Case numbers are listed as bankruptcy case numbers due to software limitations).

5. I have carefully read and understand the provisions of the Protective Order.
6. I will comply with all of the provisions of the Protective Order.
7. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action, any Confidential Material that is disclosed to me.
8. I will return all Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained, or to counsel from whom I received the Confidential Material.
9. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order.

Dated: _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

[PROPOSED] PROTECTIVE ORDER

WHEREAS, Respondents the Commonwealth of Puerto Rico (the “Commonwealth”), the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) (collectively, “Respondents” and with Movants, “Parties”) possess ~~information that they claim~~ is confidential, proprietary, and commercially sensitive information that Respondents will disclose to Movants the Ad Hoc Group of General Obligation Bondholders (“GO Group”), Assured Guaranty Corp. (“AGC”), Assured Guaranty Municipal Corp. (f/k/a Financial Security Assurance Inc.) (“AGM” and, together with AGC, “Assured”), the Mutual Fund Group, and National Public Finance Guarantee Corporation (“National”) (collectively “Movants” and with Respondents, “Parties”), in connection with ~~the Court’s December 15, 2017~~an Order Authorizing Examination pursuant to

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last

Rule 2004 of the Federal Rules of Bankruptcy Procedure (“Rule 2004”) (~~Dkt. No. 2033~~), dated December 15, 2017, and that Respondents also may need to disclose to Movants in connection with future orders authorizing examination pursuant to Rule 2004; and

WHEREAS ~~Movants have established~~, the Court finds good cause for entry of to enter this Order (“Protective Order (“Order”)”) pursuant to Rule 26 of the Federal Rules of Civil Procedure, made applicable to this Title III proceeding by Rule 7026 of the Federal Rules of Bankruptcy Procedure, to facilitate discovery in the Title III proceeding while protecting such confidential information from improper disclosure and use; and

IT IS HEREBY ORDERED as follows:

DEFINITIONS

1. “Material” shall mean and refer to all documents and electronically stored information, within the meaning of ~~Rule 34 of the Federal Rules of Civil Procedure~~, Fed. R. Civ. P. 34, made applicable to this Title III proceeding by Rule 7034 of the Federal Rules of Bankruptcy Procedure, as well as any deposition testimony, deposition exhibits, interrogatory responses, responses to requests for admission, responses to production requests, responses to deposition on written questions and other written, recorded, electronic, or graphic materials produced or made available by any Respondent or non-party, as well as any information contained in any of above items.

2. “Confidential” or “Confidential Material” shall mean and refer to any Material produced by any Respondent or non-party (each referred to herein as a “Producing Party”) that the Producing Party considers in good faith to contain commercial, financial, trade secret, research and development, or personal information of a proprietary nature that is not known

Four Digits of Federal Tax ID: 3747) (Title III Case numbers are listed as bankruptcy case numbers due to software limitations). (Title III Case numbers are listed as bankruptcy case numbers due to software limitations).

to, or has not generally been made available to, the public or other information the disclosure of which, in the good faith judgment of the Producing Party, would be detrimental to the conduct of the Producing Party's business or official functions.

3. "Qualified Persons" shall mean and refer to:

- (a) Employees of the Parties and their affiliates, House Counsel, Outside Counsel of Record for each Party and their paralegals and other professional personnel including support and IT staff to whom disclosure of information is necessary for the litigation of this Title III proceeding;
- (b) testifying or consulting experts retained by any Party and their associates or other professional personnel including support and IT staff, and consultants to the Parties and their affiliates to whom disclosure of information is necessary for the litigation of this Title III proceeding;
- (c) any mediator retained by the parties or appointed by the Court in this Title III proceeding and employees of such mediator who are assisting in the conduct of the mediation;
- (d) deposition witnesses;
- (e) the Court and all persons assisting the Court in this Title III proceeding, including law clerks, court reporters, translators, and clerical personnel;
- (f) translators and outside litigation support vendors (including commercial copying and imaging services, vendors assisting with electronic discovery matters, and trial consultants) retained by a Party in connection with this Title III proceeding;
- (g) persons who are authors, addressees, and recipients of documents containing Confidential Material to the extent they have previously had lawful access to such documents; and
- (h) professional court reporters and their staff engaged to transcribe testimony in this Title III proceeding.

4. "House Counsel" shall mean and refer to attorneys who are employees of a Party or an affiliate of a Party.

5. “Outside Counsel of Record” shall mean and refer to attorneys who are not employees of a Party but are retained to represent or advise a Party and have appeared in this matter on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party, or contract or temporary attorneys who have been retained, through an agency or directly, by a law firm which has appeared on behalf of a Party.

SCOPE AND INTERPRETATION OF THIS ORDER

6. This Protective Order shall be applicable to, and shall govern, all Material produced and disclosed pursuant to a Rule 2004 examination in the above titled Title III proceeding, and shall remain in effect until further order of the Court. The protections conferred by this Protective Order cover not only Confidential Material, but also (1) any information copied or extracted from Confidential Material; (2) all copies, excerpts, summaries, or compilations of Confidential Material; and (3) any testimony, conversations, or presentations by Parties or their counsel that might reveal Confidential Material. Issues relating to the use of Confidential Material may be revisited by the Parties and the Court in advance of any evidentiary hearing or trial in this Title III proceeding.

7. All Material, including, but not limited to, Confidential Material produced in this Title III proceeding, shall be used only in connection with this proceeding, and not for any other business, competitive, personal, private, public, or other purpose whatsoever. This Protective Order shall be binding on the Parties to this Title III proceeding and their successors, parents, subsidiaries, divisions, affiliates, employees, officials, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

DESIGNATION OF CONFIDENTIAL MATERIAL

8. Any Respondent or non-party may designate any Material as Confidential Material by affixing the legend “CONFIDENTIAL” to each item satisfying the definitions set

forth above. ~~Within five (5) business days of the entry of this Protective Order, Respondents shall specifically identify as CONFIDENTIAL any documents in the Intralinks data room that (1) have been ordered produced pursuant to the Court's December 15, 2017 Rule 2004 Order (Dkt. No. 2033), the Court's February 26, 2018 Order on Fiscal Plan Development Materials (Dkt. No. 2590) (and Movants' associated Motion to Compel) and the Joint Report of Movants and Respondents With Respect to Order Authorizing Rule 2004 Examination Dated December 22, 2017 and (2) meet the definition of CONFIDENTIAL under this Order. If Respondents fail to identify any document produced or deemed produced pursuant to Rule 2004 as Confidential Material within five (5) business days of the entry of this order, each such document will not be treated as Confidential Material under this Protective Order~~For the avoidance of doubt, Material that Respondents have uploaded to the Intralinks Data Room (the "Data Room Material") is subject to Nondisclosure Agreements and, in the case of Material provided in connection with mediation, Rule 408 of the Federal Rules of Evidence and the mediation agreements (collectively, the "Data Room Restrictions"). Movants may request in writing that certain Data Room Material be subject to the terms of this Protective Order, rather than the Data Room Restrictions. Any such request must identify the affected Material by location (folder or document number) in the Data Room, and Movants must give Respondents at least five (5) business days to respond. Thereafter, the Parties shall meet and confer in an attempt to resolve any dispute without Court intervention. If any Data Room Material is made subject to this Protective Order, whether by agreement of the Parties or by Court order, such material will be deemed to constitute Confidential Material subject to this Order without the need to affix any additional marking or designation, unless Movants agree in writing or the Court orders otherwise.

9. If a Respondent or non-party elects to make Confidential Material available for inspection, the producing party need not mark the Material in advance of any such inspection, but instead, if items are selected for copying, may affix the labels to the selected items at that time. All Confidential Material inspected, but not copied, is to be treated as Confidential.

10. Where a Respondent or non-party produces electronic files in native electronic format, such electronic files and documents may be designated for protection under this Protective Order by appending to the file names or designators information indicating whether the files contain Confidential Material, or by any other reasonable method for appropriately designating such information produced in electronic format, including by making such designations in reasonably accessible metadata associated with the files. Where Confidential Material is produced in electronic format on a disk or other medium that contains exclusively Confidential Material, the "CONFIDENTIAL" designation may be placed on the disk or other medium. When electronic files or documents in native form are printed for use at deposition, in a court proceeding, or for provision to any Qualified Person in accordance with the terms of this Protective Order, the Party printing the electronic files or documents shall affix a legend to the printed documents saying "CONFIDENTIAL" and include the production number and designation associated with the native file. For the avoidance of doubt, Data Room Material made available subject to this Protective Order pursuant to Paragraph 8 shall be treated as Confidential Material without the need for any additional designation.

11. Whenever discovery is sought from a non-party, a copy of this Protective Order shall accompany the discovery request or subpoena. Any non-party producing Materials pursuant to a subpoena or otherwise ("Third-Party Material") may also designate items as being Confidential at the time of production, and such designation will have the full effect given to such

labels by this Protective Order. If any Party chooses to challenge a non-party's designation of Third-Party Material as "Confidential" under the procedures set forth in paragraph 15, the producing non-party, or the other Party, may oppose that challenge. However, nothing herein shall be deemed to permit non-parties to review or obtain any documents or things designated as Confidential by any Party other than in accordance with paragraphs 16-17.

12. In the case of deposition testimony and related exhibits, any Party may designate portions of the transcript (including exhibits) Confidential by making a statement to that effect on the record during the course of the deposition, or by written notice to the other Party within thirty (30) days after receipt of the transcript; provided that the entire deposition transcript shall be treated as Confidential prior to each Party's designation or the expiration of the 30-day period, whichever comes first. If the designation is made during the course of the deposition, or if a witness believes an answer will require him to divulge Confidential Material, or if the attorney taking the deposition believes that the question will divulge Confidential Material, all persons not permitted access to such Confidential Material under the terms of this Protective Order shall be excluded from the deposition room and the designating party shall instruct the court reporter to place the legend "CONFIDENTIAL" on the pages containing that information and to place on the cover of the transcript the legend "CONTAINS CONFIDENTIAL MATERIALS." Where the designation is made after receipt of the transcript, each Party shall be responsible for marking the designated transcripts with the appropriate legend, as instructed by the designating Party.

13. The failure to designate Material as Confidential shall not be deemed a waiver in whole or in part of the claim of confidentiality. Upon prompt notice from the producing Party of such failure to designate, the receiving Party shall cooperate to restore the confidentiality of the Confidential Material. No Party shall be held in breach of this Protective Order if, prior to

notification of such later designation, such Confidential Material had been disclosed or used in a manner inconsistent with such later designation. The producing Party shall provide substitute copies bearing the corrected designation. The receiving Party shall return or certify the destruction of the previously undesignated Material.

14. Inadvertent production of information that is subject to the attorney-client privilege, deliberative process privilege, or work-product immunity does not waive the ~~attorney-client~~any privilege or ~~work-product~~ immunity if a request for return of such documents or information is made promptly after the producing Party learns of its inadvertent production. A Party receiving a request for the return of inadvertently produced documents shall promptly return the inadvertently produced documents to the producing Party and destroy all remaining copies of the inadvertently produced documents, including electronic, paper, and other copies.

15. This Protective Order shall not foreclose any Party from seeking a ruling from the Court that a Party (or non-party) has improperly designated Material (or Third-Party Material) as Confidential Material. If a Party believes documents have been inappropriately labeled as Confidential, it shall identify with particularity the document(s) or information that it contends should be designated differently and state the grounds for each objection with particularity. Thereafter, the Parties (or Party and non-party) shall meet and confer in an attempt to resolve the dispute without Court intervention within five days of receipt of the written list of challenged documents. If the dispute cannot be resolved, the objecting Party may file with the Court a "Motion to Remove Confidential Designation." The Party (or non-party) asserting confidentiality shall have the burden of establishing that the information should be protected from disclosure. Except as otherwise permitted under this Order, no Party shall disclose any Material

labeled Confidential unless and until there is an order from the Court ordering the designation to be removed.

TREATMENT OF CONFIDENTIAL MATERIAL

16. The substance or content of Confidential Material, as well as copies, notes and memoranda relating thereto, shall not be disclosed or made available to anyone other than Qualified Persons identified in paragraph 3(a) – (h), and no person shall disclose such information to those Qualified Persons identified in paragraph 3(b), (d), (f), or (h) herein without furnishing to such person a copy of this Protective Order and obtaining from that person an executed Confidentiality Agreement, the form of which is set forth in Exhibit A. Notwithstanding the foregoing, prior to the entry of this ~~Stipulated~~ Protective Order by the Court, Confidential Material may be shown to a Qualified Person identified in paragraph 3(b), (d), (f), or (h) if such person is shown a draft of this Protective Order and agrees to be bound by its terms. Such person must promptly execute a Confidentiality Agreement once this Protective Order is entered by the Court.

17. If any Qualified Person permitted access to Confidential Material receives a subpoena or documentary demand that encompasses any Confidential Material produced pursuant to this Protective Order, that Qualified Person shall object thereto and provide prompt written notice to the Party or non-party who originally produced the Confidential Material. If any Material designated as Confidential is disclosed, through inadvertence or otherwise, to anyone not authorized under the terms of this Protective Order, then the person inadvertently disclosing the Confidential Material shall use his or her best efforts to bind the recipient to the terms of this Protective Order. Such person shall be informed promptly of all the provisions of this Protective Order, identified to the non-disclosing Party, and requested to execute a Confidentiality Agreement the form of which is set forth as Exhibit A.

18. Any Confidential Material filed with or otherwise submitted to the Court shall be filed or submitted under seal consistent with the local rules for the United States Bankruptcy Court for the District of Puerto Rico, and any case management procedures governing this Title III proceeding. Any motion to file material under seal must include information sufficient to demonstrate that the sealed filing is warranted despite the First Amendment and common law rights of access to judicial documents. If any Confidential Material is used in any court proceeding, it shall not lose its designation through such use, and the Parties shall take all steps required to protect the confidentiality of the Confidential Material during such use, including but not limited to designating the portions of the hearing transcript concerning such Material as Confidential.

19. The restrictions imposed by this Protective Order may be modified or terminated only by written stipulation of the Parties or by order of the Court. This Protective Order shall not prevent any Party or non-party from seeking additional protective orders, or from seeking relief, including injunctive and/or other equitable remedies, or from asserting evidentiary objections, in a court of competent jurisdiction to prevent the disclosure or use of Confidential Material. This Court shall retain full and exclusive jurisdiction during the pendency of this case and thereafter to enforce this Protective Order and to grant relief for any violation thereof. All signatories of ~~Exhibit~~Attachment A hereto explicitly consent to the jurisdiction of this Court for such purposes.

20. Nothing herein shall be construed as (a) preventing any Party from continuing to use any Material in the public domain or that subsequently becomes a part of the public domain other than as a result of any act of such Party or of disclosure in violation of this Protective Order; (b) limiting a Party's use or disclosure of its own information designated as Confidential; (c) preventing the disclosure of Confidential Material with the consent of the

designating Party or non-party; or (d) preventing a Party from continuing to use any information or Material that it had the right to use and which was obtained independently of disclosure in this Title III proceeding.

21. Nothing herein shall be deemed to be a limitation upon, or a waiver of, the rights of the Parties or any objections the Parties may have, under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Federal Rules of Evidence.

RETURN OF CONFIDENTIAL MATERIALS

22. At the conclusion of this Title III Proceeding, by way of final judgment, settlement or otherwise, including all appeals, all Confidential Material, along with all copies, summaries and compilations thereof (except documents filed with the Court, depositions transcripts, and work product) shall be (a) returned to counsel for the designating Party or non-party; or (b) destroyed (and certified by affidavit as having been destroyed) by counsel for the Party in possession thereof. If any person is unable to destroy or return the Confidential Material upon reasonable effort, or is prevented from destroying or returning such Material due to operation of law, this requirement shall be excused; however, all other duties with respect to the confidentiality of this Material shall remain in effect. At the conclusion of this Title III proceeding, the provisions of this Protective Order shall continue to be binding upon all persons subject to this Protective Order.

SO ORDERED.

Dated: April ____, 2018

/s/ _____
JUDITH GAIL DEIN
United States Magistrate Judge

SRF 24157

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO'S
SUPPLEMENT TO AND JOINDER IN THE RESPONSE OF THE PUERTO RICO
FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY TO MOTION TO
COMPEL OF THE AD HOC GROUP OF GENERAL OBLIGATION BONDHOLDERS,
AMBAC ASSURANCE CORPORATION, ASSURED GUARANTY CORP., ASSURED
GUARANTY MUNICIPAL CORP., THE MUTUAL FUND GROUP, AND NATIONAL
PUBLIC FINANCE GUARANTEE CORPORATION, AND REQUEST FOR ENTRY OF
PROTECTIVE ORDER**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are: (i) the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) the Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) the Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) the Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) the Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.



The Commonwealth of Puerto Rico (the “Commonwealth”), as a Title III Debtor, by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Commonwealth’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), hereby supplements and joins in the response of the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) (the “AAFAF Response”) to the *Motion to Compel Compliance with February 26, 2018 Order and For Entry of a Protective Order of Ad Hoc Group of General Obligation Bondholders, Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., The Mutual Fund Group, and National Public Finance Guarantee Corporation* (“Movants”) ECF No. 2865 (the “Motion”).

JOINDER

As demonstrated in the AAFAF Response, Movants’s application is a thinly-veiled effort to obtain reconsideration of the Court’s February 26, 2018 discovery order regarding the use of Fiscal Plan Development Materials and should be denied. ECF No. 2590 (the “Order”). This Court ruled on February 26 that “Movants have not shown good cause for the immediate use of the information, which would require the disclosure of many documents currently shared amongst the parties pursuant to protective orders and/or non-disclosure agreements.” Order at 11. The Court left the issue of appropriate confidentiality restrictions regarding such material for a future date, holding that “while Movants may attempt to use the Fiscal Plan Development Materials in the Title III or adversary proceedings, Respondents are not prejudiced from objecting to that use on a document by document basis. Such objections may include the necessity of keeping a particular protective order in place.” *Id.* In other words, the Court *denied* Movants’ request to eliminate confidentiality restrictions, subject to Movants’ right to seek to use

the subject material in the future and Respondents' right to oppose such use. The Motion seeks to undue the Order.

Significantly, the day after this Court handed down the Order, Judge Swain issued a ruling in the AMBAC adversary proceeding that corroborates the Oversight Board's prior contention that the fiscal plans cannot be litigated. *See Ambac v. Commonwealth of Puerto Rico, et al.*, No. 17-00159-LTS, Dkt. No. 156 at 12 (D.P.R. Feb. 27, 2018) ("To the extent these claims rest on contentions that the Fiscal Plan violates Section 201(b) specifications . . . this requested relief necessarily implicates review of the Fiscal Plan's certification and therefore the Court lacks subject matter jurisdiction to consider the merits of the claims."). Accordingly, discovery for the purpose of litigating any fiscal plan is completely inappropriate.

Movants completely overlook this fundamental aspect of the Order, insisting that it stripped confidentiality protections from virtually all the materials that have been provided to them, including information provided to Movants in the dataroom and through mediation. *See* Motion, Ex. C, ECF No. 2865-3.² The Court did no such thing, and its carefully considered balancing of the rights of the parties as embodied in the Order cannot be so cavalierly ignored. Movants have not shown good cause to disregard confidentiality and obtain authority to use information however they wish, or provided a compelling reason to grant the relief they seek, let alone prior to a document-by-document review, and their Motion should be denied.

² Though Movants' brief asks the Court to "compel production" of certain Fiscal Plan Development Materials, this is a misnomer: Movants have already been provided with access to *all* these materials. The disputed issue is the level of confidentiality those materials should be afforded.

CONCLUSION

For the reasons stated in the AAFAF Response, and as supplemented herein, the Oversight Board respectfully requests that the Court deny the Motion, and enter the proposed protective order, attached to the AAFAF's Response as Exhibit A.

Dated: April 23, 2018
San Juan, Puerto Rico

/s/ Martin J. Bienenstock

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