UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-72983/ September 4, 2014

In the Matter of	:	ORDER PURSUANT TO SECTIONS 13(f)(4) and 13(f)(5) OF THE SECURITIES EXCHANGE ACT OF 1934 DENYING REQUESTS FOR CONFIDENTIAL TREATMENT OF INFORMATION REQUIRED TO BE FILED PURSUANT TO SECTION 13(f)(1) OF THE ACT
Brooklyn Capital Management, LLC	:	

Brooklyn Capital Management, LLC ("Brooklyn Capital") is a Delaware limited liability company and an investment adviser registered under the Investment Advisers Act of 1940. By letter dated February 14, 2013, Brooklyn Capital submitted a written request pursuant to section 13(f)(4) of the Securities Exchange Act ("Exchange Act") and rule 24b-2 under the Exchange Act seeking confidential treatment of information that Brooklyn Capital otherwise was required to disclose on Form 13F pursuant to section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder for the quarter ended December 31, 2012 ("December 2012 CT Request"). By letter dated May 15, 2013, Brooklyn Capital also submitted a written section 13(f) confidential treatment request for the quarter ended March 31, 2013 ("March 2013 CT Request") that, in substance, materially is the same as the December 2012 CT Request.

The Commission has considered the December 2012 CT Request and the March 2013 CT Request. The Commission deems it appropriate in the public interest and for the protection of investors pursuant to sections 13(f)(4) and 13(f)(5) of the Exchange Act to deny the December 2012 CT Request and the March 2013 CT Request.

Background

Section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder require every "institutional investment manager," as defined in section 13(f)(6)(A) of the Exchange Act, that exercises investment discretion with respect to "section 13(f) securities," as defined in rule 13f-1, having an aggregate fair market value of at least $100 million ("Institutional Manager," and the securities, "Reportable Securities"), to file with the Commission quarterly reports on Form 13F setting forth each Reportable Security's name, CUSIP number, the number of shares held, and the market value of the position. Form 13F must be filed within 45 days of the end of the calendar year during which the $100 million threshold was satisfied and within 45 days of the end of the first three calendar quarters that follow.

Under section 13(f)(4) of the Exchange Act, information filed on Form 13F must be made publicly available, "except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with [the Freedom of Information Act ("FOIA")]." Under section 13(f)(5), "[i]n exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets."

Rule 200.80(b) of the Commission's FOIA rules provides that the Commission generally will not publish or make available to any person matters that fall into any of the nine specified categories ("FOIA Matters"). One of the specified FOIA Matters is "trade secrets and commercial or financial information obtained from a person and privileged or confidential" ("Commercial FOIA Matter").

An Institutional Manager seeking to delay or prevent public disclosure of any FOIA Matter provided on Form 13F must submit a written confidential treatment request following the procedures set forth in rule 24b-2 under the Exchange Act and the Commission's Instructions to Form 13F ("Instructions"). Rule 24b-2(b)(2)(ii) under the Exchange Act requires that a request for confidential treatment of Form 13F information contain, among other things, "a statement of the grounds of objection referring to, and containing an analysis of, the applicable exemption(s) from disclosure under the Commission's rules and regulations adopted under [FOIA]." Rule 24b-2(b)(2)(ii) also requires that a request for confidential treatment of Form 13F information contain "a justification of the period of time for which confidential treatment is sought." The Instructions state that an Institutional Manager "requesting confidential treatment must provide enough factual support for its request to enable the Commission to make an informed judgment as to the merits of the request" and must "address all pertinent factors."

If an Institutional Manager is requesting confidential treatment for a Commercial FOIA Matter, the Instructions indicate that the "pertinent factors" include five areas: (1) a description of the investment strategy, including the extent of any program of acquisition or disposition; (2) an explanation of why disclosure of the securities would be likely to reveal the strategy; (3) a demonstration that the revelation of the investment strategy would be premature; (4) a demonstration that failure to grant the request for confidential treatment would be likely to cause substantial harm to the Institutional Manager's competitive position; and (5) a statement of the period of time for which confidential treatment is requested. The Instructions also provide that an Institutional Manager may discuss each of the five areas listed above with respect to a class of holdings rather than with respect to each individual holding if the Institutional Manager "can identify a class or classes of holdings as to which the nature of the factual circumstances and the legal analysis are substantially the same."

The December 2012 CT Request and the March 2013 CT Request

The December 2012 CT Request and the March 2013 CT Request each makes two arguments. First, each request argues broadly that "Congress' intent is that the Commission should grant confidential treatment to a manager's Form 13F investments in every circumstance in which confidentiality is in the public interest or for the protection of investors. More specifically, the Commission should grant confidential treatment in every case in which premature disclosure of an investment manager's investments may harm the manager's clients and that harm outweighs the benefits of such disclosure to non-clients . . " (emphasis in the original). The December 2012 CT Request and the March 2013 CT Request each proceeds to argue that confidential treatment for Brooklyn Capital's Reportable Securities is appropriate in order to protect its clients from price fluctuations that "often" follow from the revelation of Brooklyn Capital's ownership of shares in a particular security, as well as to avoid *potential* harm to "investors that track the investments of money managers via Forms 13F and seek to invest based on such information."

The second argument in each of the December 2012 CT Request and the March 2013 CT Request specifically addresses the five factors discussed in the Instructions relating to a Commercial FOIA Matter. The December 2012 CT Request and the March 2013 CT Request each requests confidential treatment for a period of one year "as to all of Brooklyn Capital's holdings that have not been the subject of a Schedule 13D or Schedule 13G filed by Brooklyn Capital or an affiliate of Brooklyn Capital." Upon the pending expiration during 2014 of the respective one-year periods of confidential treatment requested, Brooklyn Capital submitted *de novo* requests pursuant to Instruction 2.g. to extend the periods requested for an additional one year, or until January 31, 2015 for the December 2012 CT Request and until May 13, 2015 for the March 2013 CT Request. The December 2012 CT Request and the March 2013 CT Request each states that Brooklyn Capital "is a value oriented activist investor" that "follows a program of acquisition, holding, or disposition of a security based on its determination of the value of the security." The December 2012 CT Request and the March 2013 CT Request each states that "many of Brooklyn Capital's investments are in companies with a market capitalization of less than $300 million," that "public disclosure of the securities would necessarily reveal Brooklyn Capital's opinion that such securities represent a value oriented opportunity that is susceptible to investor activism," and that "revelation of Brooklyn Capital's investment strategies through its Section 13(f) holdings . . . is *likely* to increase the cost of increasing such holdings and decrease the prices [Brooklyn Capital's] clients receive in disposing of them" (emphasis added).

The Commission's Findings

Under section 13(f)(4) of the Exchange Act, the Commission may delay or prevent public disclosure of Form 13F information only in accordance with the FOIA. Thus, section 13(f)(4) sets forth the first statutory condition that the Commission must evaluate in order to be able to grant confidential treatment under section 13(f). Brooklyn Capital must satisfy the section 13(f)(4) standard before the Commission can move on to evaluate the additional conditions in section 13(f)(5) of the Exchange Act that any grant of confidential treatment be necessary and appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets. Thus, Brooklyn Capital's argument that the Commission should grant confidential treatment in "every" circumstance where doing so is in the public interest overlooks the prerequisite for confidential treatment that Congress established in section 13(f). Although the December 2012 CT Request and the March 2013 CT Request each does not actually specify that Brooklyn Capital is seeking confidential treatment of a FOIA Matter or state that Brooklyn Capital is seeking confidential treatment of a Commercial FOIA Matter, each appears to seek protection as a Commercial FOIA Matter because it each discusses the five factors listed in the Instructions relating to a Commercial FOIA Matter.

The December 2012 CT Request and the March 2013 CT Request each fails to establish that the Form 13F information for which it is seeking confidential treatment is "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (*i.e*., a Commercial FOIA Matter). The December 2012 CT Request and the March 2013 CT Request each appears to want the Commission to conclude that Form 13F information should be treated as a Commercial FOIA Matter, and therefore granted confidential treatment, based on a subjective allegation by an Institutional Manager that disclosure of Reportable Securities *might* harm its clients. Such an approach would undo the entire regime calling for public availability of information about the investment activity in Reportable Securities by Institutional Managers that Congress created in section 13(f) of the Exchange Act. Congress limited confidential treatment by reference to FOIA, and to be treated as a Commercial FOIA matter, an applicant must establish that the particular security at issue fits within that category. General and/or conclusory assertions will not suffice.

Here, the information provided by Brooklyn Capital does not rise above the level of mere conclusory allegations of potential harm to its clients. The December 2012 CT Request and the March 2013 CT Request each contains but a general description of Brooklyn Capital's value oriented activist investment style, without any details about Brooklyn Capital's strategies for particular Reportable Securities. The December 2012 CT Request and the March 2013 CT Request each also does not explain why, in Brooklyn Capital's view, the 45-day pre-filing deadline lag time that is available to each public Form 13F filer after a quarter ends is not sufficient to protect Brooklyn Capital's interests. The December 2012 CT Request and the March 2013 CT Request each makes generalized statements about potential post-disclosure movements in the market price of a Reportable Security, without the data and analysis that are necessary to turn a subjective allegation of potential harm into information that could be used to support the existence of a Commercial FOIA Matter that warrants confidential treatment. Each request addresses neither the status nor the duration of any purported acquisition or disposition program, and each request fails to justify the requested period of confidential treatment.

The December 2012 CT Request and the March 2013 CT Request each fails to establish that Brooklyn Capital's Form 13F information is a Commercial FOIA Matter that may be granted confidential treatment pursuant to section 13(f)(4) of the Exchange Act. Therefore, under sections 13(f)(4) and 13(f)(5) of the Exchange Act, the Commission finds it appropriate in the public interest and for the protection of investors to deny the December 2012 CT Request and the March 2013 CT Request.

Accordingly, IT IS ORDERED that, pursuant to sections 13(f)(4) and 13(f)(5) of the Exchange Act, the December 2012 CT Request and the March 2013 CT Request each is denied.

By the Commission.

Kevin M. O'Neill
Deputy Secretary