

JONES DAY

**MEMO ENDORSED**

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November 4, 2019

**VIA ECF AND ELECTRONIC MAIL**

The Honorable William H. Pauley III  
United States District Court, Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Room 1920  
New York, New York 10007  
Jonathan\_mccann@nysd.uscourts.gov

Re: *Commerzbank AG v. U.S. Bank Nat'l Ass'n et al.*,  
No. 16-cv-04569-WHP (S.D.N.Y.)  
Request to File Redacted Documents and Documents Under Seal

Dear Judge Pauley:

We represent Defendant U.S. Bank in the above-referenced action. U.S. Bank is serving today its Reply papers in support of its Motion for Partial Summary Judgment (“Reply”). Pursuant to Rule V.A. of Your Honor’s Individual Practices, the Joint Stipulation and Confidentiality and Protective Order entered by the Court in this case, ECF No. 109 (“Protective Order”), and the Court’s order dated July 29, 2019 (ECF No. 290) (the “July 29 Order”), we write to request permission to file in partially redacted form U.S. Bank’s Reply Memorandum of Law in Support of its Motion for Partial Summary Judgment (“Reply Brief”), U.S. Bank’s Reply and Response to Plaintiff’s Counter-Statement of Undisputed Facts Pursuant to Rule 56.1 of the Local Civil Rules for the Southern District of New York (“Reply 56.1”), the Reply Declaration of Prof. Dr. Mathias Rohe (“Rohe Reply”), and the Expert Declaration of Stephen Moriarty QC (“Moriarty Declaration”); and in partially redacted and fully redacted form certain Exhibits to the Supplemental Declaration of Michael T. Marcucci, as identified in Appendix A to this letter.

In accordance with Rule V.A., the Protective Order, and the July 29 Order, U.S. Bank is filing today proposed redacted versions of these documents as exhibits to this letter motion. U.S. Bank will send unredacted, highlighted electronic copies of the Reply Brief, the Reply 56.1, the Rohe Reply, and the identified exhibits to the Courtroom Deputy via e-mail.

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The Reply Brief, the Reply 56.1, the Rohe Reply, the Moriarty Declaration, and the identified exhibits contain, reproduce, paraphrase, or disclose “Discovery Material” that has been designated as “Confidential Information,” as that term is defined in paragraph 3(a) of the Protective Order. These documents further contain, reproduce, paraphrase, or disclose information relating to U.S. Bank’s and non-parties’ confidential and commercially sensitive agreements and procedures; Plaintiff Commerzbank’s commercially sensitive investment and litigation strategy and procedures; and non-parties’ commercially sensitive communications and holdings. The Reply Brief, Reply 56.1, Rohe Reply, and Moriarty Declaration also contain information as to which the Court previously granted U.S. Bank’s and Plaintiff’s sealing requests in connection with their moving and opposition papers, respectively. *See* ECF Nos. 305, 321. Consistent with Paragraph 15 of the Protective Order, the parties have conferred regarding the scope of the materials contained, reproduced, paraphrased, or disclosed in U.S. Bank’s Reply papers, and have de-designated materials in order to narrow the amount of information subject to this request.

Lastly, consistent with Rule V.A. and the July 29 Order, U.S. Bank will wait to file the Reply Brief, the Reply 56.1, the Rohe Reply, the Moriarty Declaration and the identified exhibits until the Court rules on U.S. Bank’s request to file documents in partially and fully redacted form. Accordingly, U.S. Bank will file today all Reply papers that are not subject to this request and will serve today via e-mail unredacted copies of all Reply papers, including unredacted copies of papers subject to this request, on counsel for Plaintiff and Defendant Bank of America.<sup>1</sup>

Application granted.

Dated: November 19, 2019  
New York, New York

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.

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<sup>1</sup> Because they are voluminous and do not contain any Confidential Information, U.S. Bank is not filing or sending to the Courtroom Deputy via e-mail as part of this letter request the Exhibits to the Rohe Reply, which consist of translations of publicly available German-language court decisions, statutes, legal treatises, and news articles. Similarly, U.S. Bank is not filing or sending to the Courtroom Deputy via e-mail the Exhibits to the Moriarty Declaration, which consist of English court decisions, statutes, and legal treatises. U.S. Bank will, however, serve Plaintiff and Defendant Bank of America with copies of the Rohe Reply Exhibits and Moriarty Declaration Exhibits today, file those exhibits when the Court rules on U.S. Bank’s sealing request, and provide the Court with copies of the Rohe Reply Exhibits and Moriarty Declaration Exhibits as part of the unredacted hyperlinked summary judgment papers described in the July 29 Order.

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Respectfully submitted,

/s/ Michael T. Marcucci

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Enclosures (via ECF and electronic mail)

cc: Counsel of Record (via ECF and electronic mail)

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**Appendix A**

Exhibits Requested To Be Filed In Partially Redacted Form

1. Exhibit 271
2. Exhibit 327

Exhibits Requested To Be Filed In Fully Redacted Form

1. Exhibit 274
2. Exhibit 275
3. Exhibit 276
4. Exhibit 277
5. Exhibit 279
6. Exhibit 302
7. Exhibit 308
8. Exhibit 309
9. Exhibit 310
10. Exhibit 315
11. Exhibit 317
12. Exhibit 360
13. Exhibit 364
14. Exhibit 368
15. Exhibit 371
16. Exhibit 372
17. Exhibit 373
18. Exhibit 381
19. Exhibit 407
20. Exhibit 412
21. Exhibit 427