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AXA Equitable Life Insurance Company and
AXA Equitable Funds Management Group, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MARY ANN SIVOLELLA, for the use and benefit of
the EQ/Common Stock Index Portfolio, the EQ/Equity
Growth PLUS Portfolio, the EQ/Equity 500 Index
Portfolio, the EQ/Large Cap Value PLUS Portfolio,
the EQ/Global Multi-Sector Equity Portfolio, the
EQ/Mid Cap Value PLUS Portfolio, the EQ/GAMCO
Small Company Value, and the EQ/Intermediate
Government Bond Index Portfolio,

Plaintiff,

vs.

AXA EQUITABLE LIFE INSURANCE COMPANY
and AXA EQUITABLE FUNDS MANAGEMENT
GROUP, LLC,

Defendants.

GLENN D. SANFORD, *et al.*,

Plaintiffs,

vs.

AXA EQUITABLE FUNDS MANAGEMENT
GROUP, LLC,

Defendant.

RECEIVED

JUN - 8 2015

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

Civil Action No. 3:11-cv-04194 (PGS)
(DEA)

and

Civil Action No. 3:13-cv-00312 (PGS)
(DEA)

REVISED ~~PROPOSED~~ ORDER
REGARDING THE PARTIES'
RESPECTIVE SEALING MOTIONS

FILED ELECTRONICALLY

WHEREAS, pursuant Local Civil Rule 5.3, Plaintiffs and Defendants AXA Equitable Life Insurance Company and AXA Equitable Funds Management Group, LLC (“Defendants”) (together with Plaintiffs, the “Parties”) have filed several motions to seal. [ECF No. 125 (*Sivolella*);¹ ECF No. 81 (*Sanford*) (“Plaintiffs’ March 20 Sealing Motion”)]; [ECF No. 127 (*Sivolella*); ECF No. 83 (*Sanford*) (“Defendants’ March 24 Sealing Motion”)]; [ECF No. 132 (*Sivolella*) (“Plaintiffs’ April 6 Sealing Motion”)];² [ECF No. 148 (*Sivolella*); ECF No. 101 (*Sanford*) (“Plaintiffs’ May 4 Sealing Motion”)] (together, the “Sealing Motions”).

WHEREAS, on May 20, 2015, after conferring with Defendants, Plaintiffs provided the Court with a letter outlining the status of the Parties’ respective sealing motions [ECF No. 154 (*Sivolella*); ECF No. 105 (*Sanford*)].

WHEREAS, on April 6, 2015, in conjunction with Plaintiffs’ Opposition to Defendants’ March 24 Sealing Motion, Plaintiffs also filed a Cross-Motion to Compel Defendants’ to review Defendants’ confidentiality designations relating to certain deposition transcripts and deposition exhibits (“Plaintiffs’ April 6 Cross-Motion to Compel”) [ECF No. 131, 131-1 (*Sivolella*)].³ Subsequently, on May 26, 2006, Plaintiffs notified the Court that Plaintiffs’ April 6 Cross-Motion to Compel is now moot. [ECF No. 155 (*Sivolella*); ECF No. 106 (*Sanford*)].

¹ All references to docket entries take the form “ECF No. ___.” Parallel docket entries for both the *Sivolella* (3:11-cv-04194) and *Sanford* (3:13-cv-00312) dockets are included for convenience.

² A corresponding filing was not made in the *Sanford* docket.

³ A corresponding filing was not made in the *Sanford* docket.

The Court, having considered the Parties' respective submissions concerning the various Sealing Motions, makes the following findings and orders with respect to each Sealing Motion:

This 4th day of June, 2015,

IT IS HEREBY ORDERED that Plaintiffs' March 20 Sealing Motion [ECF No. 125 (*Sivolella*); ECF No. 81 (*Sanford*)] is **GRANTED IN PART AND DENIED AS MOOT IN PART**.

1) Exhibits TTTTTT and VVVVVV to the March 20, 2015 Declaration of Arnold C.

Lakind ("March 20 Lakind Declaration") [ECF No. 124-3 (*Sivolella*); ECF No. 80-3 (*Sanford*)] and Exhibit I to the March 20, 2015 Declaration of Daniel S. Sweetser ("March 20 Sweetser Declaration") [ECF No. 118-1 (*Sivolella*); ECF No. 70-1 (*Sanford*)] shall remain **SEALED**. Defendants have shown good cause to seal these exhibits containing non-public profitability and cost information relating to mutual funds that are not at issue in this litigation.

a. Exhibits TTTTTT and VVVVVV to the March 20 Lakind Declaration were filed as a single docket entry with other exhibits [ECF No. 124-10 (*Sivolella*) and ECF No. 80-10 (*Sanford*)]. Exhibit I to the March 20 Sweetser Declaration was also filed in a single docket entry with other exhibits [ECF No. 118-3 (*Sivolella*); ECF No. 70-3 (*Sanford*)].

2) Exhibits 1-3 to the April 6 Declaration of Robert C. Hora ("April 6 Hora Declaration") [ECF No. 130-2 (*Sivolella*); ECF No. 86-2 (*Sanford*)] **SHALL REMAIN PUBLIC**; the non-public profitability and cost information redacted from Exhibits 1-3, for which Defendants have shown good cause to redact, shall **REMAIN REDACTED**.

- 3) All other filings made in connection with Plaintiffs' March 20 Sealing Motion shall be **UNSEALED**. [ECF No. 117 (*Sivolella*); ECF No. 69 (*Sanford*); [ECF No. 118 (*Sivolella*); ECF No. 70 (*Sanford*); [ECF No. 119 (*Sivolella*); ECF No. 71 (*Sanford*); [ECF No. 123 (*Sivolella*); ECF No. 78 (*Sanford*); [ECF No. 124 (*Sivolella*); ECF No. 80 (*Sanford*)].

IT IS FURTHER ORDERED that Defendants' March 24 Sealing Motion [ECF No. 127 (*Sivolella*); ECF No. 83 (*Sanford*)] is **GRANTED**.

- 1) Exhibits LL and RR to the January 23, 2015 Declaration of Arnold C. Lakind [ECF No. 59-3] (*Sanford*), and Exhibit D to the January 23, 2015 Declaration of Mark A. Fisher [ECF No. 110-3 (*Sivolella*); ECF No. 62-2 (*Sanford*)], which contain non-public profitability and cost information relating to mutual funds that are not at issue in this litigation, for which Defendants have shown good cause to seal, **SHALL REMAIN SEALED**.
- 2) Exhibits 4, 5 and 8 to the March 24, 2015 Declaration of Robert C. Hora ("March 24 Hora Declaration") [ECF No. 127-4 (Declaration), 127-5 (Exhibits) (*Sivolella*); ECF No. 83-4 (Declaration), 83-5 (Exhibits) (*Sanford*)], which also contain non-public profitability and cost information relating to mutual funds that are not at issue in this litigation, for which Defendants have shown good cause to seal, **SHALL REMAIN SEALED**. Exhibits 6, 7 and 9 to the March 24 Hora Declaration [ECF No. 127-4 (Declaration), 127-5 (Exhibits) (*Sivolella*); ECF No. 83-4 (Declaration), 83-5 (Exhibits) (*Sanford*)] **ARE UNSEALED**; the information redacted from Exhibits 6, 7 and 9, however, **SHALL REMAIN REDACTED**.

IT IS FURTHER ORDERED that Plaintiffs' April 6 Cross-Motion to Compel [ECF No. 131, 131-1 (*Sivolella*)]⁴ is **DENIED AS MOOT** because on May 26, 2015, Plaintiffs notified the Court that Plaintiffs accepted Defendants' confidentiality review proposal, rendering Plaintiffs' Cross-Motion to Compel moot. [ECF No. 155 (*Sivolella*); ECF No. 106 (*Sanford*)].

IT IS FURTHER ORDERED that Plaintiffs' April 6 Sealing Motion [ECF No. 132 (*Sivolella*)]⁵ is **DENIED AS MOOT**.

- 1) Plaintiffs' April 6 Sealing Motion is denied as moot because (1) Defendants have agreed to withdraw their confidentiality designations over the materials to which the Motion relates [ECF No. 138 (*Sivolella*); ECF No. 91 (*Sanford*)], and (2) the Parties informed the Court on May 20, 2015 that the April 6 Sealing Motion is withdrawn. [ECF No. 154 (*Sivolella*); ECF No. 105 (*Sanford*)].
- 2) Therefore, Exhibits L, N, P, R, S, X and Z to the April 6 Lakind Declaration [ECF No. 131-2 (Declaration), 131-4 (Exhibits L and N only), 131-5 (Exhibits P, R and S only), 131-6 (Exhibits X and Z only) (*Sivolella*)]⁶ and the redacted references to these exhibits contained in Plaintiffs' Opposition and Cross Motion to Compel [ECF No. 131] **SHALL BE UNSEALED**.

IT IS FURTHER ORDERED that Plaintiffs' May 4 Sealing Motion [ECF No. 148 (*Sivolella*); ECF No. 101 (*Sanford*)] is **GRANTED IN PART AND DENIED AS MOOT IN PART**.

- 1) Plaintiffs' May 4 Sealing Motion related to (1) certain materials previously designated "Confidential" by Defendants, and (2) certain documents obtained from

⁴ A corresponding filing was not made in the *Sanford* docket.

⁵ A corresponding filing was not made in the *Sanford* docket.

⁶ A corresponding filing was not made in the *Sanford* docket.

non-party Hartford Financial Services, LLC ("Hartford") that were designated "Confidential" in a lawsuit captioned *Kasliag v. Hartford Investment Financial Services, LLC*, No. 11-cv-01083 (RMB) (KMW) (the "Hartford Litigation"). An amendment to the confidentiality order in the *Hartford* Litigation, so-ordered by Magistrate Judge Williams in that action on April 22, 2015, permitted Plaintiffs to use these *Hartford* Litigation documents in the case at bar on the condition that they be filed under seal [ECF No. 139 (*Hartford* docket)].

- 2) Plaintiffs' May 4 Sealing Motion is denied as moot to the extent that Plaintiffs' May 4 Sealing Motion addresses Defendants' confidentiality designations. Defendants agreed to no longer assert confidentiality over the materials to which it relates [ECF No. 151 (*Sivolella*); ECF No. 103 (*Sanford*)]: Exhibit 2 to the May 4, 2015 Declaration of Daniel S. Sweetser [ECF No. 147-1 (*Sivolella*); ECF No. 98 (*Sanford*)] and Exhibits 6, 9 and 15 to the May 4, 2015 Supplemental Declaration of Arnold Lakind [ECF No. 98-1 (Declaration), 98-2 (Exhibits 6 and 9 only), 98-3 (Exhibit 15 only) (*Sanford*)]. The aforementioned exhibits shall therefore be **UNSEALED**.
- 3) Plaintiffs' May 4 Sealing Motion is **GRANTED** to the extent that it seeks to maintain the *Hartford* Litigation documents under seal. The Court agrees with the Parties ([ECF No. 154 (*Sivolella*); ECF No. 105 (*Sanford*)]) that the *Hartford* Litigation documents filed by Plaintiffs on May 4, 2015 (Exhibit 3 to the May 4, 2015 Supplemental Declaration of Arnold C. Lakind, contained within [ECF No. 98-2 (*Sanford*)]) shall remain **SEALED**.

- 4) All redacted text on pages 10 and 23 of Plaintiffs' redacted April 6, 2015 "Reply Brief in Further Support of Motion For Summary Judgment With Regard to Fees Charged to the Core Bond Index Fund" [ECF No. 98], which references the *Hartford* Litigation documents, shall also remain **SEALED**.

IT IS FURTHER ORDERED that nothing herein shall constitute a ruling concerning future requests to seal.

A handwritten signature in black ink, appearing to read "D. Arpert", is written above a horizontal line.

The Hon. Douglas E. Arpert, U.S.M.J.