SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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BENJAMIN A. PACE III and LAWRENCE WEISSMAN,

Petitioners,

-against-

DEUTSCHE BANK SECURITIES INC.; DEUTSCHE BANK TRUST CORPORATION; DEUTSCHE INVESTMENT MANAGEMENT AMERICAS INC.; and DEUTSCHE BANK TRUST COMPANY AMERICAS,

Respondents.

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Index No. _____

I.A.S. Part

PETITION FOR INJUNCTION AND PROVISIONAL RELIEF IN AID OF ARBITRATION

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Pursuant to CPLR Section 7502(c), Petitioners Benjamin A. Pace III ("Pace") and Lawrence Weissman ("Weissman") (collectively "Petitioners"), by and through their attorneys, Vladeck, Waldman, Elias & Engelhard, P.C., hereby apply for a temporary restraining order and a preliminary injunction in aid of arbitration against Respondents Deutsche Bank Securities Inc.; Deutsche Bank Trust Corporation; Deutsche Investment Management Americas Inc.; and Deutsche Bank Trust Company Americas (collectively "DB," "Respondents" or the "Bank"). In support thereof, Petitioners submit the Affidavits of Weissman and Pace, the Affirmation of Emergency of Valdi Licul, and the Supporting Memorandum of Law, and hereby show to this Court, as follows:

NATURE OF THE PETITION

1. Petitioners Pace and Weissman seek a temporary restraining order and a preliminary injunction in aid of arbitration before the Financial Industry Regulatory Authority ("FINRA"). Respondent Deutsche Bank Securities is a FINRA member, and both Petitioners are

associated persons registered with FINRA. Petitioners seek a judgment declaring the unenforceability of the notice and non-solicitation provisions of DB's "Notice & Non Solicitation Obligations Policy – US" (the "Policy").

2. The claim arises out of DB's constructive dismissal of Petitioners. DB compelled Petitioners to give their notice of resignation on May 16, 2014, by pressuring Petitioners either to resign or to sell DB's proprietary investment products to Petitioners' customers irrespective of the customers' needs, in violation of Petitioners' fiduciary obligation to customers and FINRA Rule 2111. That Rule provides that "[a] member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer."

3. Although DB has forced Petitioners to resign by pressuring them to violate their fiduciary obligation to their customers, DB seeks to prevent Petitioners from working for another employer and offering their services to their customers who have come to rely on Petitioners for directing their investments. Petitioners now seek immediate injunctive relief allowing them to leave DB and continue working in their trade without any restrictions; such equitable relief is requested in aid of Petitioners' FINRA arbitration in which they are likely to succeed on the merits of their claims.

PARTIES

4. Respondent Deutsche Bank Securities Inc., an investment bank that provides security brokerage services, is a Delaware corporation doing business in New York, New York.

5. Respondent Deutsche Bank Trust Corporation, a commercial bank that offers wealth management, trust business, and securities services, is a New York Corporation

doing business in New York, New York.

6. Respondent Deutsche Investment Management Americas Inc., which provides investment services to its clients, is a Delaware corporation doing business in New York, New York.

7. Respondent Deutsche Bank Trust Corporation, which provides commercial banking services to its clients, is a New York corporation doing business in New York, New York.

8. Petitioner Pace has been DB's Chief Investment Officer for Private Wealth Management in the Americas since 2004. Pace was also the Head of DB's Discretionary Portfolio Management, Wealth Management in the Americas and the Deutsche Asset and Wealth Management Americas Investment Committee. He is a registered broker and financial adviser and thus is an associated person of FINRA.

9. Petitioner Weissman was the Head of Portfolio Consulting at DB since 2009, and he reported to Pace. Weissman is a registered broker and thus is an associated person of FINRA.

JURISDICTION AND VENUE

10. The Court has personal jurisdiction over Respondents pursuant to CPLR Section 301.

11. Venue is proper in New York County pursuant to CPLR Section 7502(a)(i) because the arbitration of the parties' dispute shall be heard in New York County, New York, and because Respondents do business in New York, New York.

FACTUAL ALLEGATIONS

Background

12. Pace is a graduate of Columbia University, has a masters degree in Business Administration from New York University, and has worked in the financial services industry since approximately 1982. His experience includes work at PNC Financial, Bank of America, and JP Morgan Chase prior to his employment with DB.

13. Pace began to work for Deutsche Bank Trust Company Americas' predecessor company Bankers Trust in 1994, and he became DB's Chief Investment Officer for Private Wealth Management in Americas in 2004. Since 2004, he has also been the Head of Discretionary Portfolio Management, Wealth Management in the Americas. Pace was also a member of the Wealth Management Americas Executive Committee and the Deutsche Asset and Wealth Management Americas Investment Committee.

14. Weissman is a graduate of Cornell University, has a masters degree in Business Administration from Columbia University, and has worked in the financial services industry since approximately 1985. His experience includes work at TIAA-CREF, Neuberger Berman, and CitiGroup prior to his employment with DB.

15. Weissman was the Head of Portfolio Consulting at DB since 2010, and he reports to Pace. Weissman had the dual role of acting as a Portfolio Consultant ("PC") for some of DB's bigger clients and supervising other PCs, who are responsible for managing DB's customers' investment portfolios.

The Discretionary Portfolio Management Group

16. During their last few years at DB, Petitioners have worked in the Discretionary Portfolio Management group (the "Group"), which is part of DB's Wealth

Management division that manages investment portfolios of DB's customers.

17. The Group includes approximately 18 PCs, whose primary role is to develop relationships with predominantly high and ultra high net worth individuals (rather than with institutional customers), to understand the customers' needs, and to develop investment strategies. Weissman supervises other PCs in the Group and reports to Pace, who is the Head of the Group.

18. Almost all of the Group's customers have given their PCs discretionary authority to invest the customers' money, which means that individual PCs do not need customers' prior approval in order to make investment decisions. Accordingly, the Group and the PCs have a fiduciary obligation to manage customers' money with the customers' best interest in mind.

19. One of the primary ways the Group achieves that goal, and avoids conflicts, is by operating an "open architecture" platform. That term means that, although the Group is part of DB, the individual PCs are free to, and in fact are required to, consider investment products from all institutions, including DB's competitors, to ensure the greatest potential for achieving the customers' financial goals. The customers, in turn, pay a management fee to the Group based on the amount of assets the Group manages for them.

20. DB promotes the Group's "open architecture" platform to its customers in order to gain the customers' trust and confidence. Customers have been told that the Group selects investments that best fit the customers' investment profile, rather than DB's bottom line.

DB's Push to Sell High Margin Proprietary Products

21. A few years ago, DB merged its Asset Management, Wealth Management, and certain units from Corporate Banking & Securities Divisions. The Asset Management

Division is responsible for developing new investment products to offer to the public.

22. Since that time, DB management has inappropriately viewed the Group as a distribution outlet to sell DB products to its Wealth Management customers. In particular, DB has pushed the Group to invest its customers' money in proprietary DB products, i.e., products created by other areas of DB, such as the Asset Management division.

23. These proprietary products, while no doubt suitable for certain DB customers, sometimes had higher costs for the customer than the Group typically charged.

24. Moreover, by pressuring the Group to commit sufficient "seed" money to DB's proprietary products, the Bank could market its products to outside institutions. Typically, out of concern that a product will fail, outside institutions will not consider investing in any product that does not have a minimum amount of capital from other investors. In short, by pressuring the Group to provide "seed" money from its customers' assets, DB wanted to shift to the customers the risk that DB's new proprietary products may fail.

25. One of those proprietary products was the DWS Strategic Equity Long-Short Fund (the "Fund"). The Fund was being developed as an "alternative investment" product, which generally meant that it invested in complicated products such as hedge funds, rather than in stocks and bonds. The Fund included four hedge funds managed respectively by Omega Advisors, Inc.; Chilton Investment Co. LLC; Lazard Asset Management LLC; and Atlantic Investment Management Inc.

26. DB planned to make an initial investment of $200 million of its own money to "seed" the Fund, that is, DB would provide money for the four hedge funds to invest. This "seed" money would be provided to the Fund in the form of a "bridge loan" from DB. The Bank planned to recoup the money by selling the Fund product to existing customers, including

those who invest with the Group. As a result, DB began to pressure Petitioners to commit significant amounts of the customers' money to the Fund.

27. For many of the Group's customers, however, DB's alternative products are not suitable investments. For example, some of the largest accounts Weissman manages are for retired investors who do not want to invest in the type of complicated alternative products pushed by DB. Other customers already have an appropriately limited portion of their portfolios invested in such alternative products. For the members of the latter group, it makes no sense to recommend that they divest themselves of existing products only to buy DB products, because the customers would only incur additional transaction fees. To recommend such transactions would violate the PC's fiduciary obligations.

28. Nonetheless, Chip Packard ("Packard"), the Chief Executive Officer of DB's Private Bank, and Stephane Farouze ("Farouze"), DB's Global Head of Alternative Products and Fund Solutions (the DB group that created the Fund), repeatedly requested data on the portion of the Group's customer portfolios that was invested in hedge funds. Packard, Farouze, and those who worked for them wanted to use that information to create numerical "targets" for the Group to invest in the Fund with the Group's customer assets.

29. DB also pressured Pace to include its proprietary products in the Group's investment models, even in those circumstances where Pace believed the products were inappropriate. As Chief Investment Officer, Pace's duties included recommending investment products to be included in model investment portfolios. These model portfolios included a mix of investment products designed to meet the needs of customers who shared common investment profiles. Where appropriate, the PCs could invest customer assets into one of the models. DB pushed Pace to recommend that the Fund be included in one of the Bank's investment models in

order to generate more sales for the Bank. Pace refused.

30. On or about April 1, 2014, Bernard Abdo ("Abdo"), DB's Head of Alternative Investments in the United States, who reported to Farouze, pressed Petitioners to commit at least $80 million of their customers' money into the Fund by May 15. Abdo wanted Petitioners to put "all hands on deck" to meet this "target" so that DB could pay back the bridge loan used to seed the Fund.

31. Thereafter, Petitioners were required to attend demand assessment meetings where DB management questioned them about their willingness to commit to the numerical "targets" DB had set for various proprietary products, including the Fund.

32. These practices were contrary to the Group's mandate to invest customer money into suitable products, regardless whether those products were sold by DB or other institutions. DB placed Petitioners and their supervisees in a position where, contrary to DB's representations to the Group's customers, the Group's primary goal would have been to drive sales of DB products and not to act as fiduciaries to its customers.

33. Indeed, Abdo was aware that customers could view the Fund negatively because it was part of a class of investments that DB had labeled "hedge fund assets." To avoid this negative connotation, Abdo urged Pace to create a new asset class called "long/short equity" to obscure that the Fund consisted of investments in hedge funds. Pace refused.

34. Petitioners were also concerned that DB was trying to circumvent normal operating procedures so that it could recoup its "seed" money as quickly as possible. New DB investment vehicles typically must go through a formal New Product Approval Process before they are marketed. Because the Fund did not go through this process, DB's internal compliance department was investigating whether the Fund should even be shown to the Group's customers.

Nevertheless, Abdo continued to pressure the Group to sell the Fund.

History of Pressure to Invest in Proprietary Products

35. This was not the first time DB tried to push through an investment product to the Group's customers without proper due diligence. In or about 2012, Farouze wanted to use customer assets to provide financing for a real estate deal in Chicago. The lead investors needed additional investment capital quickly. Farouze requested that the Group poll some of its largest customers to determine whether they were willing to provide immediate financing until permanent financing could be secured. According to Farouze, DB had less than two weeks to provide the financing for the Chicago transaction. Pace requested that DB perform its due diligence first. He insisted that the Group canvas its customers for interest in the deal. DB ultimately abandoned the deal when it learned that the lead investors had been barred for life from the securities industry for engaging in fraudulent practices.

36. In or about 2012, Packard pressured the Group to create a sales campaign for a private equity offering by Softbank. Rather than explain the merits of the investment, Packard explained that Anshu Jain, DB's Co-Chief Executive Officer, was very close to Softbank's CEO. The Group was directed to offer the investment product to each of its customers because of the investment banking relationship DB had with Softbank.

37. In addition, Packard became upset with Weissman because he had refused to create a major sales campaign for another DB proprietary product, the Secondary Opportunities Private Equity Fund III. This was another alternative product that DB wanted the Group to fund using its customers' assets. Indeed, Packard insisted repeatedly that Weissman commit more of the customers' assets to DB's proprietary products and stated that any reasonable estimate of potential sales by Weissman was "not enough."

38. In another instance of trying to push its proprietary products, DB placed pressure on the Group to provide additional "seed" money to develop a new DB portfolio that invested in European equities. This new proprietary product would replace the non-DB products in which the Group had invested for its customers. This type of "swap" of European portfolios would not have materially benefitted the Group's clients, who were already adequately invested in such a product; the switch to the proprietary product would, however, have benefitted DB.

39. Indeed, DB had also pressured Pace to include various DB's products in the Group's investment models. For example, DB pressured Pace to recommend that the Bank's European Equity Fund be included in the Group's investment model, even though that fund was not suitable for the particular model; DB's European Equity Fund invested only in European Union equities, whereas the model required investments in equities throughout Europe (including Great Britain and Scandinavian countries). In another instance, DB wanted Pace to recommend that the Group replace an outside Japanese equity fund with DB's own proprietary Japanese equity fund, even though such a swap, if executed immediately, would generate adverse tax consequences for the Group's customers.

The Planned Change in Reporting Structure

40. Packard continually tried to find various ways to circumvent the Group's fiduciary obligations so that the Petitioners could sell more high-margin proprietary products for DB's benefit.

41. In or about August 2013, Packard and Dario Schiraldi ("Schiraldi"), DB's Global Head of Sales, hired Caroline Kitidis ("Kitidis") as DB's Head of Key Client Partners and Wealth Investment Counselors in the Americas. Packard and Schiraldi planned to have the Group report to Kitidis in order to "drive investment sales." Upon information and belief,

Kitidis is known to place sales quotas on members of her team. Petitioners thought that she would do the same to the PCs in the Group if they reported to her. Such a quota system would have breached the Group's duty to customers to use an "open architecture" platform and its fiduciary obligations to put the customers' needs first.

42. Moreover, Kitidis would have been involved in determining the compensation for Weissman and other PCs in the Group, and thus could have exerted significant pressure on the Group to invest customer money into proprietary products.

43. DB's legal department opposed the idea of the Group's reporting to Kitidis because such a supervisory structure presented a clear conflict. Packard nevertheless continued (and continues) to put pressure on DB's legal department to approve his scheme.

44. Undeterred, Packard considered other ways to evade DB's fiduciary duty obligations. Packard developed a plan to move six PCs, including Weismann, to report to Kitidis. Those six PCs managed approximately $8 billion in assets. In an attempt to avoid the fiduciary-duty problem, Packard planned to move the PCs into DB's brokerage unit. Traditionally, brokers do not have the same fiduciary obligations to customers as financial advisors like the PCs. By moving the PCs to another unit, Packard hoped to make the PCs use their existing relationships with their customers to sell DB's products.

45. Another plan Packard developed was to create a "dotted line" reporting relationship between the PCs and Kitidis. Thus, while the PCs would continue to report to Pace, Kitidis would nevertheless be able to pressure PCs to sell DB's proprietary products.

46. Upon information and belief, these schemes created the same type of conflicts the Group was trying to avoid. Many of the PCs who reported to Pace and Weissman expressed their concerns about DB's push to sell proprietary products and asked whether DB

would diminish their compensation if they did not meet Packard's targets.

47. Petitioners became particularly concerned when they learned that DB had fired Arnaud De-Servigny ("De-Servigny"), DB's Global Chief Investment Officer for Wealth Management. Upon information and belief, De-Servigny had protested DB's efforts to use client money to pre-fund DB's investments and raised concerns about violation of DB's fiduciary obligations. De-Servigny also had questioned DB's plan to have PCs reporting to the sales department.

Petitioners' Complaints About the Conflicts

48. Despite their concerns about retaliation, beginning in or about the Fall of 2013, Petitioners repeatedly complained about DB's efforts to have Petitioners and the Group breach their fiduciary obligations.

49. In or about November 2013, Pace expressed his concern to Randy Brown ("Brown"), DB's Global Chief Investment Officer, that DB viewed the Group as a large and convenient receptacle for the Bank's high margin products. Pace also told Brown that Pace was concerned that the Bank would not give Pace the authority to remove an underperforming proprietary product from an investment model where Pace believed the DB product was underperforming.

50. On March 6, 2014, Weissman sent an email to Pace stating that the pressure to use DB's internal products was limiting the Group's ability to act as fiduciaries. In particular, Weissman raised the prospect that Abdo, among others at DB, wanted to "double dip" on fees charged to customers. Abdo planned to have the Group charge a management fee based on customer assets invested in DB's proprietary products, which already have an embedded management fee. The members of the Group have repeatedly told their customers that the Group

does not engage in such "double dipping."

51. In April 2014, Weissman sent a memorandum to Christian Nolting ("Nolting"), DB's Global Head of Discretionary Portfolio Management, expressing his concerns about Packard's plans and the resulting breach of the customers' trust. Among other things, Weissman told Nolting that the Group had a large number of customers who were simply not interested in DB's high margin alternative products. Weissman subsequently spoke to Nolting who agreed; Nolting sent an email to Brown stating, among other things, that the Group could not have a reporting relationship with the sales department (i.e., Kitidis) because of the Group members' fiduciary duties to customers.

52. On April 9, 2014, Weismann again raised his concerns to Pace that the push to sell the Fund was creating a significant conflict of interest. Weissman explained that the Fund had not yet gone through the normal approval process. Moreover, the Group was being asked to "pre-sell" the Fund, which had no assets and was not tradeable. Therefore, if the "pre-sell" was not effective, the Fund would close and the Group's customers would forfeit all of the expenses incurred. Moreover, customers would incur additional fees. In sum, Weissman explained that many of the Group's customers, such as those who are retired, were not interested in alternative products and would view the Fund as merely another undesirable proprietary DB product.

53. In each instance, Pace agreed with Weissman's concerns and forwarded Weissman's emails to upper management. Pace also spoke to Brown about the concerns expressed in Weissman's email.

54. Shortly thereafter, Weissman was called into meetings with Brown and Jerry Miller ("Miller"), Head of Asset and Wealth Management for the Americas. Among other

things, Weissman told them that the Group was being pressured to sell products that were inappropriate for many clients and that he and Pace were concerned about the plan to move the Group to the sales department. Weissman also told them that he was concerned about his job if he did not comply. Neither Brown nor Miller could assure Weissman that the pressure would cease.

DB Forces Petitioners to Quit, Misinforms Customers about the Reasons for Petitioners' Departure, and Seeks to Enforce Its Notice and Non Solicitation Policies

55. DB put Petitioners in the untenable position of choosing between violating their fiduciary obligations to their customers and disobeying the mandates of DB's management. For instance, DB continued to look for ways to have the Group report to the sales department to generate more sales even after being told that the Group would have discretion regarding investments.

56. On May 16, 2014, having no choice, Petitioners gave DB their notice of resignation.

57. Petitioners have not used any confidential information to compete with the Bank nor have they told customers that they have resigned.

58. Nevertheless, the Bank has begun spreading misinformation to customers about Petitioners' departure. Upon information and belief, the Bank sent emails to customers stating that Petitioners left the Bank as "part of a larger restructuring," a statement intended to mislead customers into believing Petitioners were dismissed for performance reasons.

59. In addition, on May 21, 2014, Brown called to warn Pace that he should "lay low." According to Brown, if Pace did not do so, DB would get "deeply personal" and Pace would feel the "full wrath" of the Bank.

60. In addition, DB intends to force Petitioners to comply with the Policy,

which purports to mandate that each Petitioner "remain an employee of the Bank" for 90 days, "continue to work in order to transition his duties," and purports to prohibit each from performing "any services for any other employer during the Notice Period unless Deutsche Bank agrees in writing to terminate [their] employment."

61. Furthermore, the Policy purports to prohibit Petitioners from soliciting customers for 120 days from the end of the 90-day notice period.

62. The Policy is unenforceable because DB has forced Petitioners to resign by pressuring them to breach their fiduciary obligations to their customers.

63. The Policy is also unenforceable because it will cause harm to the customers that Petitioners serviced while at DB. Over a number of years, these customers have developed trust and confidence in Petitioners to invest their personal assets. Yet the customers are unaware of DB's efforts to push its proprietary investment products to benefit DB's bottom line, irrespective of the customers' investment needs. The customers and their investments would be left in a precarious position if Petitioners are prohibited from working in the industry for a 90-day period, or from communicating with these customers at least to tell them that Petitioners are no longer with DB and to correct DB's deliberate misstatements about the reasons for Petitioners' departure. The Policy would deny the customers basic facts that they need to make an informed choice about where to invest their assets.

REQUESTED RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

(a) Enter an Order pursuant to CPLR Section 7502(c) temporarily and preliminarily restraining and enjoining Respondents DB from directly or indirectly enforcing the Notice and Non-Solicitation Policies; and

(b) Grant such other and further relief as this Court deems just and equitable.

Dated: New York, New York
May 21, 2014

VLADECK, WALDMAN, ELIAS
& ENGELHARD, P.C.

By:______________________________

Debra L. Raskin
Valdi Licul
Jungmin Cho
Attorneys for Petitioners
1501 Broadway, Suite 800
New York, New York 10036
(212) 403-7300