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FILED UNDER SEAL

Clerk of Court
Second Circuit Court of Appeals
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Donald J. Trump v. Deutsche Bank, AG*; 19-1540

To the Clerk of Court:

Defendant-Appellee Deutsche Bank AG (“Deutsche Bank” or the “Bank”) submits this letter in response to the Court’s order directing the Bank to inform the Court “whether it has in its possession any tax returns of any of the individuals or entities named or referred to (directly or indirectly) in paragraph 1 of the subpoenas” served on the Bank on April 15, 2019 by the House Committee on Financial Services and Permanent Select Committee on Intelligence (the “Subpoenas”). ECF No. 156 (Aug. 26, 2019).

Based on Deutsche Bank’s current knowledge and the results of the extensive searches that have already been conducted, the Bank has in its possession tax returns (in either draft or as-filed form) responsive to the Subpoenas for Redacted

Redacted In addition, the Bank has such documents related to parties not named in the Subpoenas but who may constitute “immediate family” within the definition provided in the Subpoenas. The Bank does not believe it possesses tax returns responsive to the Subpoenas for individuals named in the Subpoenas other than those identified above.

The Bank files this letter under seal only for the limited purpose of redacting the name(s) of the specific individual(s) for whom the Bank has disclosed it has responsive tax returns per this Court’s order. The Court has asked us to explain why the Bank seeks to treat that limited portion of the response as confidential. The following statutory, contractual, and privacy concerns have informed the Bank’s reluctance to publicly identify tax-return-related information related to specific individuals. The Court may wish to take these concerns into account in determining what portions of our response letter should be made publicly available.

First, under the Gramm-Leach-Bliley Act (“GLBA”), financial institutions are generally not permitted to disclose nonpublic personal information of their customers to a third party without the consent of the customer, except as otherwise provided in the Bank’s privacy notice to

August 27, 2019
Clerk of Court
Second Circuit Court of Appeals
Page 2

such customers or under a limited set of other circumstances. *See* 15 U.S.C.A. § 6802(a)-(b). Nonpublic personal information includes personally identifiable financial information, including names and street addresses, where those details are disclosed in a manner that indicates the associated names are clients of a financial institution. 16 C.F.R. § 313.3(n)(1)(i), (3)(ii).

In line with the Bank's own privacy notices, which generally reserve its right to disclose customer information in response to court orders (among other scenarios), GLBA provides that financial institutions may disclose nonpublic personal information of their customers to comply with "applicable legal requirements," including a subpoena, summons or "to respond to judicial process." 15 U.S.C.A. § 6802(e)(8). Courts have generally construed such "judicial process" to include prosecution of financial crimes, *Individual Reference Services Grp., Inc. v. FTC.*, 145 F. Supp. 2d 6, 35 n.22 (D.D.C. 2001), or compliance with discovery requests, so long as the disclosure is made subject to an appropriate protective order, *see Alpha Funding Grp. v. Cont'l Funding LLC*, 848 N.Y.S.2d 825, 831-32 (N.Y. Sup. Ct. 2007). At the same time, courts have cautioned that the judicial process exception to the GLBA's privacy provisions "does not provide a license to undercut the express interest of Congress in protecting the privacy of consumers' financial information." *Martino v. Barnett*, 595 S.E.2d 65, 72 (Sup. Ct. W.Va. 2004).

Here, the Bank's act of confirming its possession of tax returns for specific individuals necessarily confirms the Bank's client relationship with those individuals. Further, such confirmation reveals information concerning the nature of the business the Bank has conducted or contemplated with such individuals; tax returns are not among the types of information typically shared by a client in opening an ordinary deposit account or applying for a credit card. In light of these circumstances, in the letter filed on the public docket, the Bank seeks to redact the names of specific individuals to strike an appropriate balance between compliance with the Court's order (to which it has responded in full) and the competing client privacy considerations underlying the GLBA.

Second, separate and apart from the GLBA, the Bank owes contractual obligations to its customers with respect to the circumstances and procedures under which the Bank may unilaterally disclose certain personal information. For example, the Bank's contracts often include provisions related to the treatment of confidential information received from customers. Such contracts provide specifically delineated circumstances in which limited disclosures may be permissible, including, for example, in response to requests from regulators or to the extent required by applicable laws or regulations or by a subpoena or similar legal processes. Inappropriate (or broader-than-necessary) disclosure could expose the Bank to potential civil liability.

August 27, 2019
Clerk of Court
Second Circuit Court of Appeals
Page 3

Third, this Court's established precedent governing the filing of sensitive material under seal supports the limited redaction sought here. Although the public enjoys a "presumption of access" to certain documents submitted to courts, that right is "not absolute." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 & n.4 (2d Cir. 2006). That principle applies with special force to tax return information. *See, e.g., Solomon v. Siemens Indus., Inc.*, 8 F. Supp. 3d 261, 285-86 (E.D.N.Y. 2014) ("Tax returns are generally afforded special protection from public disclosure.").

To be sure, this letter does not contain the contents of any customer tax returns. But, as discussed above, public confirmation of Deutsche Bank's possession of tax returns for specific individuals in and of itself would "reveal specific details of the manner in which" customers "conduct[] [their] personal banking activities." *Prescient Acquisition Grp., Inc. v. MJ Pub. Tr.*, 487 F. Supp. 2d 374, 377 (S.D.N.Y. 2007).

Given the foregoing, Deutsche Bank respectfully submits the full unredacted version of this letter under seal.

Sincerely,

/s/ Raphael A. Prober
Raphael A. Prober

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CERTIFICATE OF SERVICE

I certify that on August 27, 2019, I filed a copy of the redacted version of the foregoing document via the CM/ECF system of the United States Court of Appeals for the Second Circuit, which I understand caused service on all registered parties.

/s/ Raphael A. Prober
Raphael A. Prober