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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
NORTHWEST AIRLINES CORPORATION, et al.,	:	**Case No. 05-17930 (ALG)**
Debtors.	:	**Jointly Administered**

DEBTORS' OBJECTION TO MOTION OF THE AD HOC EQUITY COMMITTEE FOR AN ORDER (A) PURSUANT TO SECTIONS 105(a) AND 107(b) OF THE BANKRUPTCY CODE AND RULE 9018 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE GRANTING LEAVE TO FILE ITS BANKRUPTCY RULE 2019(a) STATEMENT UNDER SEAL, (B) LIMITING THE DISCLOSURE REQUIRED IN THEIR RULE 2019 STATEMENT AND (C) GRANTING A TEMPORARY STAY PENDING DETERMINATION OF THIS MOTION

Northwest Airlines Corporation ("NWA Corp.") and its debtor affiliates ("Northwest" or the "Debtors"),[1] as and for their objection (the "Objection") to the motion (the

[1] In addition to NWA Corp., the Northwest Debtors consist of: NWA Fuel Services Corporation ("NFS"), Northwest Airlines Holdings Corporation ("Holdings"), NWA Inc. ("NWA Inc."), Northwest Aerospace Training Corp. ("NATCO"), Northwest Airlines, Inc. ("Northwest Airlines"), MLT Inc.

"Motion") of the Ad Hoc Committee of Equity Security Holders (the "AHC") for an order (A) granting leave for the AHC to file its Rule 2019 statement under seal, (B) limiting the disclosure required in their Rule 2019 statement and (C) granting a temporary stay pending determination of the Motion, respectfully represent as follows:

PRELIMINARY STATEMENT

1. The AHC is seeking to hide from the public, as well as the Debtors and the committee of unsecured creditors (the "Creditors Committee"), trading information that this Court has already determined is explicitly required by Bankruptcy Rule 2019(a). Analyzing and considering the explicit language of Rule 2019(a), this Court has already determined that each member of the AHC must disclose the amount of claims or interests in Northwest securities, including the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. Nevertheless, and under the guise of a motion to seal, the AHC attempts to reargue the issue, and limit and avoid their clear disclosure obligations under Rule 2019.

2. In particular, the AHC tries to squirm away from their disclosure obligations by pretending that the limited Summary Information (defined below) that was provided to the Debtors during discovery related to the AHC's motion for the appointment of an official equity committee, is somehow connected to, or would serve as a substitute for, its Rule 2019 mandatory disclosures. This is not the case. The Debtors never agreed that such limited information would satisfy the AHC's Rule 2019 disclosure obligations or would somehow supersede a decision by this Court on the Rule 2019 issue. Specific adherence to the

("MLT"), Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc. ("Compass"), NWA Retail Sales Inc. ("NWA Retail"), Montana Enterprises, Inc. ("Montana"), NW Red Baron LLC ("Red Baron"), Aircraft Foreign Sales, Inc. ("Foreign Sales") NWA Worldclub, Inc. ("WorldClub") and NWA Aircraft Finance, Inc. ("Aircraft Finance").

requirements of Rule 2019 is necessary if the AHC intends to participate in these cases as a committee.

3. The AHC also tries to remain under the radar screen in this public case by requesting that its Rule 2019 disclosure statement be kept under seal pursuant to section 107(b). Even worse, the AHC requests that the Rule 2019 disclosure statement only should be provided to the United States Trustee (the "U.S. Trustee"), and not shared with the Debtors or the Creditors Committee. There is simply no basis for this request. What the AHC suggests would essentially render the policy underlying Rule 2019 (and Rule 2019 itself) null and void by obviating the requirement that equity holders publicly disclose the specifics as to their purchase of a debtor's securities. Indeed, the plain language of Rule 2019(b) establishes that the information surrounding an equity holder's purchase of securities was intended to be publicly disclosed.

4. Additionally, section 107(b) only applies to trade secrets or confidential research, development, or commercial information. The historical trading information mandated by Rule 2019 is not trade secret or commercially sensitive material. Rule 2019 does not require, and the Debtors do not seek, disclosure of trading strategies, models, analytics or other information that may be characterized as "proprietary" to an institution's investment strategy or philosophy. Indeed, none of the legal precedent referenced by the AHC demonstrates a court's application of section 107(b) to keep under seal a Rule 2019 disclosure statement involving the historical purchase and sale information of a debtor's securities. To the contrary, the AHC's case law confirms that a party's purchase of a security is not, in fact, a trade secret. Moreover, the AHC's contention that such information is confidential or a trade secret is belied by the fact that investors routinely disclose such information in public filings required by the Securities and Exchange Commission (the "SEC"), and the leading member and

largest holder of the Debtors' securities on the AHC already disclosed such trading information in its public filings, even though it was not required to make such a disclosure.

5. Accordingly, this Court should deny the AHC's motion and require the AHC to satisfy its disclosure obligations under Rule 2019 – as it has already ordered – and allow the AHC's Rule 2019 disclosure statement to be available to the Debtors, the Creditors Committee and the public.

BACKGROUND

6. On September 14, 2005 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.[2] Each Debtor is continuing to operate its business and manage its properties as a debtor in possession pursuant to section 1107(a) of the Bankruptcy Code.

7. On September 30, 2005, pursuant to section 1102 of the Bankruptcy Code, the U.S. Trustee appointed a statutory committee of unsecured creditors (the "Creditors Committee").

8. On November 15, 2006 U.S. Airways disclosed its unsolicited offer to acquire Delta Air Lines ("Delta") out of its bankruptcy proceedings and sparked widespread speculation in the trading markets about consolidation in the airline industry. Within a week of U.S. Airways' bid for Delta, a market value weighted index of the stock of U.S. legacy carriers increased by 18%, and the price of Northwest's stock increased nearly 300%. The members of the AHC, a group of twenty sophisticated investors who regularly invest in distressed companies, saw these conditions as opportunistic for investment, and quickly accumulated a position in

[2] NWA Aircraft Finance, Inc. filed its petition on September 31, 2005.

Northwest's common stock that now amounts to 30% of the Debtors' outstanding common shares.

9. For example, on November 15 and 16, 2006, Owl Creek Asset Management L.P. ("Owl Creek"), the lead member of the AHC, purchased a total of 4,399,000 shares of Northwest common stock. This is confirmed by Owl Creek's Schedule 13D filing with the SEC on or about November 21, 2006 – a filing it was not required to make under the securities laws. Indeed, the Debtors believe that Owl Creek filed a Schedule 13D so it could publicize its hyperbolic views regarding the value of Northwest and speculation as to the course of the reorganization cases. *Significantly, Owl Creek's 13D filing, which states the dates, price and amount of its recent purchases of Northwest common stock, demonstrates that its purchasing information is not a trade secret or confidential commercial information .*

10. On November 21, 2006, Owl Creek sent a letter to the U.S. Trustee requesting the appointment of an official committee. Owl Creek's request was premised on its unsupported contention that the increased trading price of Northwest's common stock, fueled by speculation in the market about industry consolidation, was evidence of the Debtors' solvency and created value in the Debtors for equity security holders. The following day, a second committee member, Smith Management LLC, joined in the request. On December 8, 2006, Owl Creek sent another letter to the U.S. Trustee renewing its request for the appointment of an official equity committee.

11. By letters dated December 11, 2006, the Debtors and the Creditors Committee opposed the request for the appointment of an official committee, on the grounds, inter alia, that the Debtors are insolvent, and the trading prices of their securities were not based on any fundamental change in their businesses sufficient to create value for a recovery to equity holders. The Debtors also explained in their letter to the U.S. Trustee their position that the

trading prices of the Debtors' securities, fueled by temporary market speculation, are not indicative of the Debtors' reorganization value.

12. By letter dated December 21, 2006, the U.S. Trustee confirmed that she had given the AHC's request "careful consideration and analysis" and declined to appoint an official committee. She stated that the AHC failed to demonstrate both the likelihood of a meaningful recovery for equity holders in these cases, and that a separate committee was necessary for their adequate representation.

13. Over three weeks later, on January 11, 2007, the Ad Hoc Committee filed its motion to compel the appointment of an official committee (the "AHC Motion").

14. On January 16, 2007, the law firm of Kasowitz, Benson, Torres & Friedman LLP ("KBT&F), counsel for the AHC, filed a Verified Statement Pursuant to Bankruptcy Rule 2019(a) [Docket No. 45714] in connection with its representation of the AHC. On January 19, 2007, KBT&F filed a Verified Amended Statement Pursuant to Bankruptcy Rule 2019(a) (the "KBT&F 2019 Statement") [Docket No. 4574]. The KBT&F 2019 Statement merely discloses the identity of the then 11 members of the AHC and their "aggregate" holders of Northwest common stock (i.e., 16,195,200 shares) and their "aggregate" claims amount (i.e., $164.7 million). While the KBT&F 2019 Statement discloses that "[s]ome of the shares of common stock and some of the claims were acquired by the members of the [AHC] after the commencement of the Cases," it does not disclose the specific dates of and amounts paid for their purchases or any sales or dispositions of their Northwest common stock or claims. In addition, it does not disclose or break down the specific amount of claims and interests owned by each individual member of the AHC.

15. After the filing of the AHC Motion, on January 26, 2007, Owl Creek wrote to the Chairman of Northwest's Board of Directors demanding that the Debtors accede to

the demands of the AHC for the appointment of an official equity committee, withdraw their plan of reorganization and threatening to convene a shareholders' meeting to attempt to remove the Board if the Debtors did not acquiesce to its demands. By letter dated February 1, 2007, the Debtors' Board assured Owl Creek it was exercising its fiduciary duty to all constituencies, including the Debtors' shareholders, and otherwise declined to meet Owl Creek's demands.

16. On February 7, 2007, the AHC served document subpoenas and notices of depositions on numerous third-parties, seeking information relating to valuations of the Debtors and potential mergers, consolidations or other sales involving the Debtor.

17. On February 9, 2007, the Debtors filed a motion for (I) an order imposing civil contempt sanctions on the AHC and awarding attorney's fees and costs to the Debtors, (II) a protective order pursuant to Rules 26(c) and 45(c)(3) of the Federal Rules of Civil Procedure, and (III) an order compelling the AHC to file a Verified Statement Pursuant to Bankruptcy Rule 2019(a) (the "2019 Motion"). At the February 14, 2007 hearing on the 2019 Motion, the Court granted the protective order and took the Rule 2019 issues under advisement.

18. During the expedited discovery process in connection with the AHC Motion and *prior to this Court's subsequent ruling on the Rule 2019 issue*, the Debtors and the AHC agreed that for the *limited purposes of the AHC Motion*, the AHC would produce (i) the aggregate amount of claims and stock purchased and sold by the individual members of the AHC during the year preceding the Petition Date; (ii) the aggregate amount of claims and stock purchased and sold by the individual members of the AHC after the Petition Date; and (iii) the aggregate amount of claims and stock purchased and sold by the individual members of the AHC after November 15, 2006 (the "Summary Information"). At no point, did the Debtors agree that such Summary Information was sufficient to meet the AHC's disclosure requirements

under Rule 2019 or was to override any decision this Court might make with respect to the Rule 2019 issue.

19. On February 26, 2007, the Court issued a Memorandum of Opinion and Order with respect to the Rule 2019 issue (the "2019 Opinion & Order") in which it compelled the AHC to comply with Rule 2019 and file a statement thereunder within three business days of the entry of the 2019 Opinion & Order . Specifically, the Court held that the AHC was required to disclose the amounts of claims or interests owned by each member of the AHC, including the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. Because the KBT&F 2019 Statement did not disclose such information, the Court concluded that the KBT&F 2019 Statement was "insufficient on its face." See 2019 Opinion & Order, at 4.

20. On February 28, 2007, the AHC filed a statement withdrawing their motion for the appointment of an official equity committee.

21. On March 1, 2007, the AHC filed its Motion seeking leave to file a 2019 statement under seal and to only disclose the Summary Information it provided to the Debtors during discovery relating to the AHC Motion. For the reasons discussed below, the Court should deny the Motion and compel the AHC to comply with the explicit terms and requirements of Rule 2019 and this Court's 2019 Opinion & Order.

ARGUMENT

I. THE AHC SHOULD COMPLY WITH THE DISCLOSURES MANDATED BY THE EXPLICIT TERMS OF RULE 2019(a) AND THE COURT'S 2019(a) OPINION AND ORDER

22. There can be no dispute that the AHC is required to file a disclosure statement setting forth all the information explicitly required by Rule 2019(a). As this Court observed, "[t]he Rule is long-standing, and there is no basis for failure to apply it as written."

2019 Opinion & Order at 6-7 (emphasis added). Specifically, each member of the AHC is required to disclose the amount of claims or interests in Northwest, including the times when acquired, the amounts paid therefor, and any sales or other disposition thereof.

23. Nevertheless, and under the guise of a motion to file under seal, the AHC asks this Court to permit them to satisfy the disclosures required by Rule 2019 by simply providing the Summary Information they provided to the Debtors during the discovery phase relating to the AHC Motion. However, the Debtors only agreed to accept such Summary Information for the *limited purposes of the AHC Motion.* Under no circumstance, did the Debtors agree that such Summary Information was sufficient to meet the AHC's disclosure requirements under Rule 2019 or was to override any decision this Court may make with respect to the Rule 2019 issue. It is wrong and disingenuous for the AHC to contend that the Debtors' agreement with respect to expedited discovery was an agreement on the Debtors' part that the AHC need not meet their Rule 2019 disclosure obligations.

24. The Court also should deny the AHC's request for the following additional reasons. First, AHC's request is really a request for this Court to reconsider its findings and rulings in the 2019 Opinion & Order. This Court has already analyzed the disclosure obligations of the AHC and concluded that each member of the AHC must provide the amounts of claims or interests owned by each member of the AHC, including the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. If the AHC wants to provide information different than what this Court has already ordered it should follow the local rules governing reconsideration, which it has not done.[3]

[3] Under the local rules of Bankruptcy Court, to seek reconsideration of a courts ruling, a party must comply with the following procedures:

25. Second, as this Court correctly found in its 2019 Opinion & Order, Rule 2019 explicitly requires committees to disclose more than the Summary Information the AHC provided to the Debtors in connection with the AHC Motion. Rule 2019 provides, in relevant part:

> *(a) Data Required.* [E]very . . . committee representing more than one creditor or equity security holder . . . shall file a verified statement setting forth
>
> *(1)* the name and address of the creditor or equity security holder;
>
> *(2)* the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition;
>
> *(3)* . . . in the case of a committee, the name or names of the entity or entities at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agree to act; and

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> (a) A motion for reargument of a court order determining a motion shall be served within 10 days after the entry of the Court order determining the original motion, or in the case of a court order resulting in a judgment, within 10 days after the entry of the judgment, and, unless the Court orders otherwise, shall be made returnable within the same amount of time as required for the original motion. The motion shall set forth concisely the matters or controlling decisions which counsel believes the Court has not considered. No oral argument shall be heard unless the Court grants the motion and specifically orders that the matter be reargued orally. (b) The expense of any party in obtaining all or any part of a transcript for purposes of a new trial or for amended findings may be a cost taxable against the losing party.

S.D.N.Y. Loc. B.R. 9023-1 (2006). In making a motion for reargument or reconsideration, a movant must show that the court overlooked controlling decisions or factual matters "that might materially have influenced its earlier decision" or "demonstrate the need to correct a clear error or prevent manifest injustice." In re Best Payphones, Inc., No. 01-15472 (SMB), 2007 Bankr. LEXIS 266, at *15 (S.D.N.Y. Jan. 24, 2007) (internal citations omitted). Furthermore, the rule permitting reargument is strictly construed to avoid repetitive arguments on issues the court has already fully construed. Id. at *15-16. Finally, when making a motion for reargument or reconsideration, parties cannot advance new facts or arguments. Id. Such motions are not to be used as a "vehicle for presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" Id. (internal citations omitted). Here, not only has the AHC not made a formal request for reconsideration of the 2019 Opinion & Order, but even if they did, they would be unable to demonstrate that reconsideration is appropriate.

> *(4)* with reference to the time of . . . the organization or formation of the committee . . . the amounts of claims or interests owned by . . . the members of the committee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof.

Fed. R. Bankr. P. 2019(a) (emphasis added). Rule 2019(a) also provides that "[a] supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision. Id.

26. The Summary Information the AHC provided to the Debtors essentially sets forth only the amount of stock and claims purchased and sold by the AHC in the aggregate during various time periods before and after the Petition Date. Rule 2019, on its face, requires more. The AHC should be required to disclose the times when each member of the AHC acquired its interests, the amounts paid therefor, and any sales or disposition thereof. In fact, the AHC concedes that the Summary Information it provided to the Debtors is "virtually" complete, which is to say that it is incomplete, for the purposes of Rule 2019. Motion at 14.[4]

27. Requiring the AHC to provide more than the Summary Information is particularly important at this stage of the Debtors' reorganization, where the Debtors have filed a plan of reorganization and are engaged in the plan confirmation process. "[I]t is clear that the

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[4] The AHC erroneously relies on In re Kaiser Aluminum Corp., 327 B.R. 554 (D.Del. 2005) in support of its contention that the Summary Information is sufficient to comply with Rule 2019. Motion at 15. In In re Kaiser, the United States District Court for the District of Delaware affirmed the Bankruptcy Court's holding permitting asbestos lawyers to file "exemplars" of their representation to comply with Bankruptcy Rule 2019. However, In re Kaiser involved "*law firms* representing *thousands* of asbestos personal injury tort claimants in the underlying bankruptcy cases . . . [and took] into consideration the complexities of mass tort litigation. Id. at 557, 559 (emphasis added). The holding of In re Kaiser has no bearing in situations such as this where there is no underlying mass tort litigation and representation of thousands of litigants, but where the committee at issue is composed of twenty individuals and/or entities.

The AHC also attempts to use In re Kaiser in support of its argument that it should be permitted to file the Rule 2019 information under seal. However, the court in In re Kaiser specifically noted that the bankruptcy court had not sealed the information, but rather had regulated access to the information by declining to post the information on the electronic docket and permitting access by motion of a party and order of the court.

proper filing of Rule 2019 disclosures, which are intended, *inter alia*, to ensure 'complete disclosure during the business reorganization process,' is essential to final confirmation of the Reorganization Plan . . . ." Baron & Budd, P.C. v. Unsecured Asbestos Claimants Comm. (In re Congoleum Corp.), 321 B.R. 147, 157 (D.N.J. 2005) (quoting In re CF Holding Corp., 145 B.R. at 126). Indeed, the AHC's complete disclosure information is relevant to the AHC's intentions and motives as participants in the plan confirmation process and whether the AHC should benefit from the imprimatur that cloaks a "committee." As this Court implicitly acknowledged in its 2019 Opinion and Order: "*Ad hoc* or unofficial committees play an important role in reorganization cases. By appearing as a 'committee' of shareholders, the members purport to speak for a group and implicitly ask the court and other parties to give their positions a degree of credibility appropriate to a unified group with large holdings." 2019 Opinion & Order at 5 (emphasis in original). Thus, if the AHC wants to participate in the reorganization process, it needs to comply with the rules and disclosure obligations relating to such participation. It is also important that there be full public disclosure in order that the Court and other parties can assess the bona fides of the AHC's inflammatory and slanderous accusations. It would be informative to know the purchases and sales of the AHC members, and the times and prices of such transactions since the original request for the appointment of an official committee.

28. Moreover, as this Court noted, unofficial committees, such as the AHC, should be required to provide complete disclosure information given the perceived abuses committed by unofficial committees in corporate reorganizations. See 2019 Opinion & Order at 6 (citing Professor (later Justice) William O. Douglas's study for the Securities and Exchange Commission regarding the abuses by unofficial committees in corporate reorganizations; Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees (1937)). Here, given the AHC's conduct, or misconduct, to

date, the concerns raised by Professor Douglas could not be any more applicable to this case and militate in favor of the AHC disclosing the information explicitly required by Rule 2019. See In re Okla. P.A.C. First Ltd. P'Ship, 122 B.R. 387, 391 (Bankr. D. Ariz. 1990) (The Code contemplates that there will be unofficial committees. Any such unofficial committees must comply with Rule 2019 by its terms . . .").

29. Accordingly, the Court should deny the AHC's request to disregard the explicit terms of Rule 2019 and compel the AHC to disclose all the specific claims and interest information it already directed the AHC to disclose in its 2019 Opinion and Order.

II. THE AHC SHOULD NOT BE PERMITTED TO FILE ITS 2019 DISCLOSURES UNDER SEAL

30. In an apparent effort to keep their disclosures a secret from the public, as well as the Debtors and the Creditors Committee, the AHC requests that the Court permit them to file their Rule 2019 disclosure statement under seal pursuant to section 107(b) of the Code. In fact, the AHC requests that only the U.S. Trustee should be permitted to see their Rule 2019 disclosure statement. Section 107(b) provides, in pertinent part, that "[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may – (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . ." 11 U.S.C. § 107(b). The AHC's request is unfounded and, if permitted, would moot the underlying purpose of Rule 2019 disclosures.

31. "The purpose of Rule 2019 is to further the Bankruptcy Code's goal of complete disclosure during the business reorganization process, and was designed to cover entities which, during the bankruptcy case, act in a fiduciary capacity to those they represent, but are not otherwise subject to control of the court." In re CF Holding Corp., 145 B.R. 124, 126 (Bankr. D. Conn. 1992) (emphasis added). See also Collier on Bankruptcy ¶ 2019.01 (15th

ed. rev. 2006) (noting that a primary purpose of Rule 2019 is its function as "part of the disclosure scheme of the Bankruptcy Code[,] . . . designed to foster the goal of reorganization plans which deal fairly with creditors and which are arrived at openly.") (quoted in In re The Muralo Co., 295 B.R. 512, 524 (Bankr. D.N.J. 2003); In re Okla. P.A.C. First Ltd. P'Ship, 122 B.R. 387, 390 (Bankr. D. Ariz. 1990)). Allowing the AHC to keep its disclosures under seal and remain in the shadows would run contrary to Rule 2019's requirement of complete disclosure and, thus, should not be permitted.

32. More importantly, the disclosures required under Rule 2019 (*i.e.* "the amounts of claims or interests owned by the members of the committee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof[]") are simply not "trade secret[s] or confidential research, development or commercial information" and do not fall within the ambit of information that can be kept under seal pursuant to section 107(b).

33. The information to be disclosed by Rule 2019 is historical, factual data of the dates and prices at which a debtor's securities were purchased and sold by each member of a committee who is purporting to act collectively on behalf of class of securities holders. The rule does not require, and the Debtors do not seek, disclosure of trading strategies, models, analytics or other information that may be characterized as "proprietary" to an institution's investment strategy or philosophy. Indeed, the Debtors cannot discern any basis in fact for the AHC's contention that disclosure of this information will disadvantage its members in the trading markets in any way, including disclosing future trades.[5] Nor is disclosure of this information extraordinary or draconian in any matter.

[5] The Debtors note that if the Court had directed the appointment of an official committee of equity holders pursuant to section 1102(a)(2) of the Bankruptcy Code, the members of the committee would not be permitted to trade in the Debtors' securities absent a Court order.

34. The federal securities laws, rules and regulations of exchanges and other regulatory authorities require wide disclosure of participants who trade in securities as part of the fundamental premise that transparency promotes fair and efficient markets and market practices. For example, Section 13(d) of the Securities and Exchange Act of 1934 provides that investors who acquire 5% of a class of registered equity securities must file a Schedule 13D. 15 U.S.C.A. § 78m(d)(1) (2002). Among other things, the Schedule 13D must disclose the background and identity of the persons filing, the source and amount of funds for any purchase and the number of shares owned. "Congress enacted section 13(d) to . . . provide for full disclosure in connection with cash tender offers and other techniques for accumulating large blocks of equity securities of publicly held companies." Portsmouth Square, Inc. v. Shareholders Protective Comm., 770 F.2d 866, 872 (9th Cir. 1985) (quoting GAF Corp. v. Milstein, 453 F.2d 709, 717 (2d Cir. 1971); H.R.Rep. No. 1711, 1968 U.S.Code Cong. and Ad.News 2814) (emphasis added and internal quotations omitted). "Such disclosure allows investors to determine the value of the corporation's securities more accurately and to make more informed investment decisions." Id. at 872-73 (quoting GAF Corp., 453 F.2d at 717). "Otherwise, investors cannot assess the potential for changes in corporate control and adequately evaluate the company's worth." GAF Corp., 453 F.2d at 717 (citation omitted).

35. Rule 2019 is a similar regulation designed to promote the same principle of transparency in bankruptcy cases. See In re CF Holding Corp., 145 B.R. 124, 126 (Bankr. D. Conn. 1992) (emphasis added) ("The purpose of Rule 2019 is to further the Bankruptcy Code's goal of complete disclosure during the business reorganization process, and was designed to cover entities which, during the bankruptcy case, act in a fiduciary capacity to those they represent, but are not otherwise subject to control of the court."). See also Collier on Bankruptcy ¶ 2019.01 (15th ed.). It would plainly be absurd to permit a trading institution to

purport to "comply" with Section 13(d) and other disclosure requirements by filing the information under seal. Likewise if the AHC were permitted to "comply" with Rule 2019 by filing the information under seal, with disclosure only to the Court and U.S. Trustee, the policy, intent and very purpose of the rule would be abrogated.

36. It is no surprise that the AHC cites no cases where any court found that the rudimentary trading information that the AHC must disclose under Rule 2019 is the type of information that is contemplated by section 107(b). Indeed, the cases cited by the AHC in support of their attempt to qualify their Rule 2019 disclosures as trade secrets are either inapposite or, in fact, confirm that such information is most definitely not a trade secret. For example, the AHC astoundingly cites Lehman v. Dow Jones & Co., 783 F.2d 285, 297 (2d Cir. 1986) in support of its contention that "the Court should protect the shareholders from the harm and prejudice that public disclosure causes." Motion at 9. Yet, Lehman clearly provides that the historical trading information required by Rule 2019 would not constitute a trade secret:

> [A trade secret] may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to . . . the security investments made or contemplated, . . . A trade secret is a process or device for continuous use in the operation of the business.

Lehman, 783 F.2d at 297-98 (citing RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added)). Thus, under the Restatement of Torts and Second Circuit precedent, security investments are not protected trade secrets.

37. The AHC also tries to qualify the trading information at issue as confidential, commercial information protected from disclosure under section 107(b). The AHC cites In re Orion Pictures Corp., 21 F.3d 24, 28 (2d. Cir. 1994), which defines commercial

information "as information which would cause an unfair advantage to competitors by providing them information as to the commercial operations of the [disclosing party]." Motion at 8. In In re Orion, however, the Court determined that there was a compelling need to keep under seal the overall structure, terms and conditions of a licensing agreement between the two parties. 21 F.3d at 28. The Court found the details of the agreement to be both commercial and confidential in nature and disclosure of that information would cause an "an unfair advantage to competitors by providing them information as to the operations of the debtor." Id. at 27. Indeed, disclosure of the details of that agreement would "render very likely a direct and adverse impairment" to the party's ability to "negotiate favorable promotion agreements with future customers" thereby giving the party's competitors an unfair advantage. Id. at 26. The Court was essentially concerned about the misuse of information concerning the party's operations in future negotiations with that party. That is simply not the case here.

38. Disclosure of the AHC's historical purchases and sales of Northwest common stock will not provide any information as to the "operations" of the AHC members in a like manner to the disclosure of the details of the licensing agreement at issue in In re Orion. Nor can it be said, as the Court said in In re Orion, that disclosure of such investment information would "render very likely an adverse impairment" to the AHC members' ability to negotiate with competitors or conduct their businesses.[6]

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[6] The AHC's reliance on In re Handy Andy Home Improvement Centers, Inc., 199 B.R. 376 (N.D. Ill. 1996) and Fed. Open Market Comm. of Fed. Reserve Sys. V. Merrill, 443 U.S. 340 (1978) are likewise misplaced. Handy Home involved a situation where the producing party was seeking to keep under seal minutes of board and executive meetings, financial performance reports and documents related to property acquisition. Merrill, involved the Federal Open Market Committee's ("FOMC") attempt to protect from disclosure the contents of a Domestic Policy Directive it created at its monthly meetings . The Directive's contained summaries of the economic and monetary background of the FOMC's deliberations at the monthly meetings, revealed in general terms what direction the Committee plans to take in the month ahead and the "tolerance ranges" for the growth in money supply and for the federal funds rate. Merrill, 443 U.S. at 344-345. The FOMC was not seeking to seal its historical trading

39. The AHC also cites six inapposite instances where this Court allowed a party to file confidential commercial information under seal. Motion at 10, ¶ 21. Each of these instances, just like in In re Orion, involved the filing of a confidential agreement. Not one example provided by the AHC provides any precedent for keeping simple historical trading information under seal. Simply put, the information concerning the Northwest security transactions that the AHC must disclose pursuant to Rule 2019 is not a trade secret or confidential information invoking section 107(b). Moreover, investors routinely reveal such information in the disclosures mandated by the Securities and Exchange Commission.

40. Most significantly, as proof that investment information is not confidential or a trade secret, Owl Creek, the leading member of the AHC (and the member of the AHC holding the largest amount of the Debtors' securities) publicly filed two 13(D) Statements with schedules listing precisely the type of information that Owl Creek and the other members of the AHC must provide in their Rule 2019 statement. Indeed, Owl Creek's 13D filings demonstrates that public disclosure of the AHC's purchases and sales of Northwest common stock would not cause them to suffer any harm or prejudice. The Debtors are unaware of any statement or contention by Owl Creek that its business has been prejudiced or harmed by its Schedule 13D filings. Significantly, Owl Creek was not even required by the securities laws to file a Schedule 13D as it did not purchase the requisite 5% of Northwest common stock. Nevertheless, Owl

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information as the AHC is seeking to do here. In addition, while the Supreme Court granted the FOMC's request to keep the Directive information private, it did so under Exemption 5 of the Freedom of Information Act, which permits the Government to defer the availability of "certain information" disclosure of which would " [i]nterfere with orderly execution of the objectives or policies of other Government agencies concerned with domestic or foreign economic or fiscal matters." 12 C.F.R. § 271.5 (1978). Here, the AHC, is not a Government agency, and is seeking to completely seal their historical trading information, and not merely "defer" its disclosure.

Creek chose to make such a filing and publicize its purchases of Northwest common stock, including the date, amount and price of purchase.

41. Importantly, creation of a committee in the first instance and membership on the AHC once it was formed, is entirely voluntary. Having chosen to join the AHC, its members cannot now escape the disclosure requirements mandated by the plain language of Bankruptcy Rule 2019 and this Court's recent 2019 Opinion & Order. Nor can it credibly be contended that the members of the AHC were unaware of the requirements of Rule 2019. It has been the law for many years. Accordingly, there is no basis for this Court to allow the AHC to file its Rule 2019 statement under seal.

WAIVER OF MEMORANDUM OF LAW

42. This Objection does not raise any novel issues of law and is otherwise supported by citations to authorities. Accordingly, the Debtors respectfully request that the Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District that a separate memorandum of law be submitted.

WHEREFORE, the Debtors respectfully request that this Court deny the Motion and grant the Debtors any other relief this Court deems just and proper.

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