UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

OANDA Corporation,

Plaintiff,

v.

GAIN Capital Holdings Inc.,
GAIN Capital Group, LLC,

Defendants.

Civil Action No.
3:20-05784-BRM-DEA

Document Filed Electronically

JURY TRIAL DEMANDED

STIPULATED CONFIDENTIALITY ORDER

WHEREAS, Plaintiff OANDA Corporation and Defendants GAIN Capital Holdings Inc.

and GAIN Capital Group, LLC, each a "Party" and together "the Parties," believe that certain

information that is or will be encompassed by discovery demands by the Parties involves the

production or disclosure of trade secrets, confidential business information, or other proprietary

information; and

WHEREAS, the Parties seek a confidentiality order limiting disclosure thereof in accordance

with Federal Rule of Civil Procedure 26(c); and

WHEREAS good cause exists for entry of this Order, *see* Fed. R. Civ. P. 26(c), *Pansy v.*

Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994); and

WHEREAS all Parties submit that they have gone to great lengths to safeguard and protect

the confidentiality of their own documents and information, and the disclosure of which would

pose a substantial risk of irreparable harm to the producing Party's legitimate competitive, privacy,

business, and proprietary interests; and

WHEREAS this Confidentiality Order provides reasonable restrictions on the disclosure

of such sensitive materials of a confidential nature; and

WHEREAS all Parties agree to the terms of this Confidentiality Order to protect their confidential documents and information; and

WHEREAS to streamline the discovery process and minimize the need for Court intervention, this Confidentiality Order adopts an "umbrella" approach that allows the producing Party to designate certain materials being produced or deposition testimony as confidential; and

WHEREAS disclosure of materials designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" are limited to specific classes of persons; and

WHEREAS this Confidentiality Order contemplates requests to file confidential documents with the Court under seal in accordance with the applicable rules and procedures, if such documents need to be filed as part of motion practice or in connection with other aspects of these proceedings; and

WHEREAS this Confidentiality Order provides that the Party requesting production of the information may challenge the producing Party's confidentiality designation before the Court, thereby minimizing the likelihood that non-sensitive documents will be unnecessarily designated as confidential; and

WHEREAS this Order allocates to the producing Party the burden of justifying the confidentiality designation, and orders of this type have been approved by the United States Court of Appeals for the Third Circuit, *see Pansy*, 23 F.3d at 787 n.17, *Cippollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1122 (3d Cir. 1986), *cert denied*, 484 U.S. 976 (1987); and

THEREFORE, in view of the foregoing and because the Parties hereto, by and through their respective counsel, have stipulated to the entry of the following Confidentiality Order pursuant to Fed. R. Civ. P. 26(c) and Local Civil Rule 5.3(b), and the Court having reviewed the

submitted declaration, and having determined that good cause exists for the entry of this Order, it is STIPULATED, AGREED and ORDERED as follows:

1. DEFINITIONS

1.1.   <u>Challenging Party</u>: a Party or Non-Party that challenges the designation of information or items under this Order.

1.2.   <u>Competitive Decision-making</u>: Competitive Decision-making shall have the meaning given to it in *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984). An individual is not involved in Competitive Decision-making solely by virtue of serving as counsel, an expert, or an outside consulting expert in this litigation.

1.3.   <u>"CONFIDENTIAL" Information or Items</u>: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

1.4.   <u>Counsel (without qualifier)</u>: Outside Counsel of Record and In-House Counsel (as well as their support staff).

1.5.   <u>Designated In-House Counsel</u>: In-House Counsel who seek access to "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter in accordance with the definitions and limitations set forth in this Confidentiality Order.

1.6.   <u>Designating Party</u>: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE."

1.7.   <u>Disclosure or Discovery Material</u>: all items or information, regardless of the

medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1.8.　　Expert: an individual with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as an outside consulting expert in this action, and (2) at the time of retention, is not currently and is not anticipated to become an officer, director, employee, or consultant of a Party or of a Party's competitor. For the avoidance of doubt, an expert is defined to include the expert's administrative support staff (*e.g.*, secretary or individuals responsible for photocopying, organizing, storing, or retrieving information) but shall not include any support personnel responsible for assisting with the substantive review or analysis of information produced or disclosed under this Order. Any expert or outside consulting expert ultimately granted access under this confidentiality order agrees that he or she shall not serve as an officer, director, employee, or consultant of a Party for a period of two (2) years following the final disposition of this litigation (as described in Paragraph 4), except this does not prohibit such expert witness or outside consulting expert from being retained as an expert witness or outside consulting expert in another litigation.

1.9.　　"HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

1.10.　　"HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive "Confidential Information or Items" representing Source Code and associated comments

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and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means. "Source Code" includes but is not limited to any human-readable programming language or format that defines software, firmware or integrated circuits.

1.11.   <u>In-House Counsel</u>: attorneys who are employees of a party to this action and who are responsible for the conduct of this litigation. In-House Counsel does not include Outside Counsel of Record or any other outside counsel. With respect to GAIN Capital Holdings Inc. and GAIN Capital Group, LLC and solely for purposes of this Confidentiality Order, In-House Counsel may include employees of StoneX Group Inc.

1.12.   <u>Non-Party</u>: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

1.13.   <u>Outside Counsel of Record</u>: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

1.14.   <u>Party</u>: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1.15.   <u>Producing Party</u>: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

1.16.   <u>Professional Vendors</u>: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing graphics, displays, exhibits or demonstrations; organizing, storing, or retrieving data in any form or medium; and other trial preparation services) and their employees and subcontractors.

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