

ORIGINAL

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
POLYPORE INTERNATIONAL, INC.,)
a corporation)
)

Docket No. 9327



THIRD PARTY WARBURG PINCUS LLC'S
MOTION FOR *IN CAMERA* TREATMENT OF MATERIAL
PREVIOUSLY DESIGNATED AS CONFIDENTIAL

Pursuant to Section 3.45 of the Federal Trade Commission's Rule of Practice, 16 C.F.R. § 3.45(b), Third Party Warburg Pincus LLC ("Warburg Pincus") hereby moves for *in camera* treatment of certain documents that Complaint and Respondent's Counsel have placed on their respective exhibit lists.

Introduction

On or about May 9, 16 and 23, 2008, Warburg Pincus produced certain documents pursuant to a Civil Investigative Demand in the above-captioned proceeding. Warburg Pincus designated these materials "Confidential" as it is defined in a Protective Order Governing Discovery Material ("Protective Order") entered on October 23, 2008. On March 26 and 27, 2009, Complaint Counsel and counsel for Polypore, respectively, notified Warburg Pincus that they may introduce into evidence forty-six Warburg Pincus documents. Paragraph 12 of the Protective Order specifically contemplates that materials designated "Confidential" may receive *in camera* treatment in a subsequent hearing.

After careful consideration of these forty-six documents, Warburg Pincus has limited its request for *in camera* treatment to thirteen narrowly-tailored excerpts (the "Proposed Exhibits"), as listed below.

<u>Exhibit No.</u>	<u>Date</u>	<u>Page No(s).</u>
PX0738	10/4/2007	4-17
PX0745	2/25/2004	1-3
PX0746	5/14/2004	1-10
PX0751	6/16/2006	1
PX0977	4/00/2006	7, 10, 14, 16-26, 28-84
PX0980	1/00/2004	1-36
PX0984	6/30/2006	1-4
PX1715	2/27/2007	2-3
PX1719	2/26/2007	2-3
PX1726	3/31/2007	1-5
PX1727	1/00/2004	3-6, 10, 12-14, 18-20, 22, 24, 32
PX1731	5/12/2004	1-9
RX0907	9/27/2007	1-3

II. Legal Standard

The Proposed Exhibits listed above warrant *in camera* treatment as provided by 16 C.F.R. § 3.45(b). Under this section, requests for *in camera* treatment must demonstrate that public disclosure of the document in question “will result in a clearly defined, serious injury to the person or corporation whose records are involved.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the document is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re Gen. Foods Corp.*, 95 F.T.C. 352, 355 (1980).

The Commission considers the following six factors in determining whether an *in camera* applicant has made a sufficient showing:

- (1) the extent to which the information is known outside the applicant’s business;
- (2) the extent to which the information is known by employees and others involved in the applicant’s business;
- (3) the extent of measures taken by the applicant to guard the secrecy of the information;
- (4) the value of the information to the applicant and its competitors;

- (5) the amount of effort or money expended by the party in developing the information; and
- (6) the ease of difficulty with which the information could be properly acquired or duplicated by others. *Bristol-Meyers Co.*, 90 F.T.C. 455, 456 (1977).

Administrative law judges have broad discretion in applying these factors to determine whether information warrants *in camera* treatment. See *In re Gen. Foods Corp.*, 95 F.T.C. at 353. Moreover, as a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third parties is important as it encourages cooperation with future adjudicative discovery requests. *Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984).

III. The Proposed Exhibits Meet the Legal Standard for *In Camera* Treatment Because Their Public Disclosure Would Result in a Clearly Defined, Serious Injury to Warburg Pincus.

A. The Proposed Exhibits Would Harm Warburg Pincus by Enabling Other Market Participants to Gain an Advantage in Current or Future Negotiations.

The Proposed Exhibits hold the keys to Warburg Pincus' proprietary process for selecting, valuing, and managing its portfolio companies. Research, analysis, and management of portfolio investments are the essence of Warburg Pincus' revenue-generating activity. The significance of Warburg Pincus' methodology is not likely to diminish in the foreseeable future. Disclosure of this information would inflict serious injury upon Warburg Pincus by enabling, for instance, a rival private equity firm to replicate Warburg Pincus' process or a potential portfolio company to gain an advantage versus Warburg Pincus in future negotiations.

The following Warburg Pincus documents warrant *in camera* treatment because they represent significant work product that Warburg Pincus has compiled at great expense and has not made available to either the general public or employees of Polypore or Warburg Pincus, other than investment professionals. Warburg Pincus consistently executes non-disclosure agreements before commencing the due diligence process with a potential portfolio company. The sheer complexity of Warburg Pincus' methodology means that it is not easily predicted, deconstructed, or replicated by competitors or others in the marketplace. Disclosure of the work product reflected in the Proposed Exhibits would wrongly enable other market participants to

benefit from Warburg Pincus' labors. *In re Gen. Foods*, 1980 FTC LEXIS 99, at *7-8 (Mar. 10, 1980); *Bristol-Meyers Co.*, 90 F.T.C. at 456.

The most sensitive of these documents, for example, explains Warburg Pincus' highly proprietary method for valuing its investments, known as "Grills" analysis. For example, pages [REDACTED] reveal: the rates of return Warburg Pincus requires before making, sustaining, or exiting an investment; the range of earnings multipliers Warburg Pincus uses to project the potential future value of an investment in a given industry sector, such as chemical companies; and an explanation of the assumptions Warburg Pincus uses in this methodology. Warburg Pincus considers this methodology crucial to its current and future business and would be put at a great disadvantage should it be discovered by any of its competitors, current or potential portfolio companies, or their customers.

Several documents, read in their entirety, reveal the specific framework and template that Warburg Pincus applies in its analysis of portfolio companies. Accordingly, the entirety of each of these documents merits *in camera* treatment. In the alternative, Warburg Pincus requests *in camera* treatment of these documents according to the categories of content listed below:

- **Warburg Pincus' Valuation and Value-Creation Methods:** Disclosure of the following pages could give a competing private equity firm the keys to how Warburg Pincus: 1) develops and implements its strategic plans to grow its investment in a portfolio company; and 2) estimates its rate of return on investment. Disclosure of this information could expose methods that are central to Warburg Pincus' core business:

[REDACTED]

- **Warburg Pincus' Due Diligence Approach:** The following pages explain Warburg Pincus' methodology for conducting due diligence before making an investment, including its areas of focus and which diligence milestones it must reach before proceeding with various steps towards closing a transaction. Disclosure of this information could enable a competitor of Warburg Pincus to replicate its processes. Similarly, disclosure could enable a current or potential portfolio company to gain undue leverage versus Warburg in future negotiations. Pages containing this sensitive information include: [REDACTED].
- **Warburg Pincus' Risk Assessments:** The following pages contain information reflecting Warburg Pincus' articulation of any risks it perceives to Polypore's business. Because the public capital markets could receive these comments as negative remarks by Polypore's owner, their disclosure could cause unnecessary unease among holders of publicly-traded Polypore stock. Pages containing this sensitive information include:
[REDACTED]
- **Investment Professionals' Analysis and Management:** Several pages disclose specific information of ongoing relevance regarding how Warburg Pincus structures and deploys teams from its various worldwide offices to evaluate and manage investment opportunities. Pages containing sensitive information include: [REDACTED]

B. Other Proposed Exhibits Would Harm Warburg Pincus by Exposing Polypore's Competitively-Sensitive Information.

As the owner of 47.8% of Polypore shares, Warburg Pincus would suffer significant injury upon disclosure of the competitively-sensitive information contained in the Proposed

Exhibits. Accordingly, Warburg Pincus requests *in camera* treatment of the documents and pages listed below.

- **Customer Information**: The following pages reflect extremely sensitive information about Polypore's relationships with its customers. Disclosure of this information could enable current and potential customers to gain undue leverage against Polypore in future negotiations. In addition, this information would be highly valuable to Polypore's competitors. Pages containing this sensitive information include:

[REDACTED]

- **Polypore Strategic Plans:** The following pages reflect Polypore's strategic plans for expansion. The following pages contain competitively-sensitive information:

[REDACTED].

- **Detailed Nonpublic Financial Data:** The following pages supply nonpublic pricing and financial information as recent as 2006 by product line, providing such granular details as sales volume of a specific product to a specific sector: [REDACTED].

Polypore does not, and has no plans to, release such financial information to the public, especially on such a granular level.

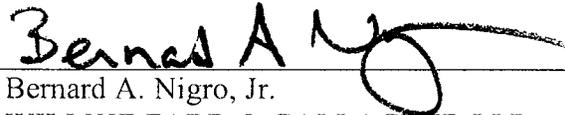
- **Competitive Intelligence:** Several pages reveal the analysis and assumptions of Warburg Pincus and Polypore regarding Polypore's competitive landscape. Discovery of these assumptions could be used by Polypore's competitors or others to gain an advantage over Polypore. Pages containing this sensitive information include: [REDACTED].

IV. Conclusion

In camera treatment of the Proposed Exhibits is appropriate for the reasons outlined above. Third Party Warburg Pincus requests that the Proposed Exhibits receive *in camera* treatment.

Dated: April 9, 2009

Respectfully Submitted,



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COUNSEL FOR THIRD PARTY
WARBURG PINCUS LLC

CERTIFICATE OF SERVICE

I, Bernard A. Nigro, Jr., hereby certify that on April 9, 2009, true and correct copies of the foregoing *Third Party Warburg Pincus LLC's Motion For In Camera Treatment of Material Previously Designated As Confidential* were served as follows:

One original and two copies served by hand delivery upon:

Office of the Secretary
Federal Trade Commission
Room H135
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

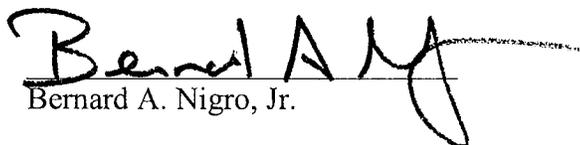
Two copies (by first class mail and email) and the documents for which Warburg Pincus LLC seeks *in camera* treatment (by first class mail) upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W., H-106
Washington, D.C. 20580

One copy served by first class mail and email to each:

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Bernard A. Nigro, Jr.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
)	Docket No. 9237
POLYPORE INTERNATIONAL, INC.,)	
a corporation)	
)	

**[PROPOSED] ORDER GRANTING
THIRD PARTY WARBURG PINCUS LLC'S
MOTION FOR *IN CAMERA* TREATMENT OF MATERIAL
PREVIOUSLY DESIGNATED AS CONFIDENTIAL**

Pursuant to Commission Rule 3.45(b), Third Party Warburg Pincus LLC (“Warburg Pincus”) has filed a Motion for *In camera* Treatment of Material Previously Designated as Confidential (“Warburg Pincus’ Motion”). It is hereby ordered that Warburg Pincus’ Motion is GRANTED for a period of three years for the documents listed below:

<u>Exhibit No.</u>	<u>Date</u>	<u>Page No(s).</u>
PX0738	10/4/2007	4-17
PX0745	2/25/2004	1-3
PX0746	5/14/2004	1-10
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PX0977	4/00/2006	7, 10, 14, 16-26, 28-84
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PX1727	1/00/2004	3-6, 10, 12-14, 18-20, 22, 24, 32
PX1731	5/12/2004	1-9

RX0907	9/27/2007	1-3
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ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: _____, 2009

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BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
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)	

DECLARATION OF MICHAEL GRAFF

1. I am a Member and Managing Director of Warburg Pincus LLC (“Warburg Pincus”) and Chairman of the Board of Polypore International, Inc. (“Polypore”).
2. Warburg Pincus currently owns 47.8% of Polypore, as of March 12, 2009.
3. On or about May 9, 16 and 23, 2008, Warburg Pincus produced documents pursuant to a Federal Trade Commission (“FTC”) Civil Investigative Demand issued in the above-captioned matter. Warburg Pincus designated these documents “Confidential” pursuant to a Protective Order Governing Discovery Material dated October 23, 2008 (“Protective Order”).
4. Warburg Pincus designated these documents as “Confidential” because they contain, among other things, proprietary financial data and projections as well as proprietary market research and analyses applicable to current or future market conditions.
5. No party at any point challenged Warburg Pincus’ “Confidential” designation of materials produced in this action.
6. Warburg Pincus produced these documents with the understanding that Warburg Pincus would have the opportunity to prevent the public release of these documents should they be used in any future administrative proceeding.
7. I understand that Complaint and Respondent’s Counsel have proposed to use a subset of these documents as exhibits (“Proposed Exhibits”) in an upcoming proceeding before the FTC.
8. The Proposed Exhibits also contain Warburg Pincus’ proprietary methodology for valuing its investments that is not available to the general public. Research, analysis, and management of portfolio investments are the essence of Warburg Pincus’

revenue-generating activity. The significance of Warburg Pincus' methodology is not likely to diminish in the foreseeable future. Disclosure of this information, including Warburg Pincus' approach to investigating and analyzing investments, would inflict serious injury upon Warburg Pincus by enabling, for instance, a rival private equity firm to replicate Warburg Pincus' process or a potential portfolio company or one of its customers to gain an advantage versus Warburg Pincus in future negotiations.

9. The Proposed Exhibits, if disclosed, would release to the public the details of how Warburg Pincus analyzes portfolio companies and decides when to invest and when to liquidate its investment. These specific details including, for example, the rates of return Warburg Pincus requires before making, sustaining, or exiting an investment; the range of earnings multipliers Warburg Pincus uses to project the potential future value of an investment in a given industry sector; and an explanation of the assumptions Warburg Pincus uses in this analysis.
10. The Proposed Exhibits contain highly confidential and extremely sensitive business information about Polypore, including information about its strategic growth plans, revenue sources, competitive intelligence, and important aspects of Polypore's relations with other businesses, including customers.
11. Neither the Proposed Exhibits nor the information they contain has been made available to either the general public or employees of Polypore.
12. Warburg Pincus and Polypore have taken, and continue to take, the following steps to safeguard the confidential nature of the Proposed Exhibits and the information they contain:
 - a. Execution of confidentiality and non-disclosure agreements; and
 - b. Designation of the Proposed Exhibits as "Confidential" before producing them in the above-captioned action with the understanding that they would be disclosed only to the limited parties listed in paragraph 9 of the Protective Order.

13. Warburg Pincus has invested significant time and money since its inception developing its proprietary methodology for selecting, valuing, and managing its portfolio companies.
14. Making available to the public the highly confidential information contained in the Proposed Exhibits would result in serious competitive harm to Polypore and Warburg Pincus.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 9, 2009

A handwritten signature in black ink, appearing to read 'M Graff', written over a horizontal line.

Michael Graff

Member and Managing Director, Warburg Pincus LLC
Chairman of the Board,
Polypore International, Incorporated