

RULING NO. C2008-3/18

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Complaint of Capital One Services, Inc.

Docket No. C2008-3

PRESIDING OFFICER'S RULING  
GRANTING ACCESS

(Issued September 16 2008)

Bank of America Corporation's Motion for Access to Sealed Deposition of Jessica D. Lowrance (Motion) was filed September 9, 2008. In the Motion, Bank of America requests access by Counsel for Bank of America, Ms. Mallon and Mr. Volner, to the deposition of Jessica D. Lowrance. A Certification for access referencing material from the August 28, 2008 session has been completed by Ms. Mallon and attached to the Motion.

Ms. Mallon and Mr. Volner shall be permitted access to the deposition of Jessica D. Lowrance after filing proper certifications with the Commission and adhering to the following procedures. Note that separate certifications were submitted by the attendees for each day of the deposition and are required for access to material associated with each individual day. A blank Statement of Compliance with Protective Conditions including the Certification page is attached to this Ruling.

Ms. Mallon has filed a certificate with the Motion applicable to day 2 of the deposition. If Ms. Mallon seeks access to the material from the first day, she must complete the attached Statement of Compliance with Protective Conditions including the Certification (and filling in the applicable date) and file this material with the Commission. If Mr. Volner seeks access, he likewise must complete the attached

Statement of Compliance with Protective Conditions including the Certification (and filling in the applicable date(s)), and file this material with the Commission.

The Commission will post the notices on its website. Access will not be granted for 48 hours after notice is filed or from publication of this Ruling, whichever is later, to allow for objections. If any party does object, it must provide written justification for its position. The person who is the subject of the objection may submit a written response to the objection no later than 48 hours thereafter. The matter will be referred to the Presiding Officer for resolution. See P.O. Ruling C2008-3/9 at 2.

#### RULING

Ms. Mallon and Mr. Volner shall be permitted access to the deposition of Jessica D. Lowrance upon compliance with the procedures specified in the body of this Ruling.

Dan G. Blair  
Presiding Officer

## STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to the August \_\_\_\_\_, 2008, closed session of the deposition of Jessica Dauer Lowrance in Docket No. C2008-3, and the discussions and materials presented therein. The purpose of the closed session of the deposition is to obtain a sworn copy of written or oral testimony, or cross-examination, of Postal Service employee Lowrance that may be of a confidential nature. Individuals seeking access to the deposition record must complete the attached certification and file it with the Commission.

1. Only a person who is either:
  - (a) an employee of the Commission with a need to know; or
  - (b) a counsel of a participant in Docket No. C2008-3, shall be granted access to the closed session. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to the closed session of the deposition. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected discussions and materials.
2. The discussions and materials presented in the closed session of the deposition are assumed to be of a confidential nature. No person granted access to the closed session is permitted to disseminate in whole or in part the discussions and materials presented in the closed session of the deposition to any person not authorized to obtain access under these conditions.
3. The duty of nondisclosure of anyone obtaining access to the discussions and materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 4 through 6, below.
4. Any written materials — including but not limited to discovery requests and responses, requests for admission and responses, deposition transcripts and exhibits, pleadings, motions, affidavits, written testimony

and briefs — that quote, summarize, or contain the discussions or materials protected under these protective conditions also are covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.

5. A participant may apply to the Commission for a ruling that the discussions and materials presented in the closed session of the deposition, stamped or designated as confidential, are not entitled to such status and protection. The Postal Service and Bank of America shall be given notice of the application and an opportunity to respond.
6. Subpoena by Courts or Other Agencies. If a court or other administrative agency subpoenas or orders production of confidential information which a participant has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within two business days) notify the Postal Service and Bank of America of the pendency of the subpoena or order to allow the designating party time to object to that production or seek a protective order.

### CERTIFICATION

The undersigned represents that:

Access to the August \_\_\_\_\_, 2008, closed session of the deposition in Docket No. C2008-3, and the discussions and materials presented therein has been authorized by the Commission by compliance with the attached Statement of Compliance with Protective Conditions and completion of this Certification. I agree to use the information ascertained only for purposes of analyzing matters at issue in Docket No. C2008-3. I certify that I have read and understand the above protective conditions and am eligible to attend the August \_\_\_\_\_, 2008, closed session of the deposition in Docket No. C2008-3 as referred to under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence the information disseminated in accordance with all of the protective conditions set out above.

Name \_\_\_\_\_

Firm \_\_\_\_\_

Title \_\_\_\_\_

Representing \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_