

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11692

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 23, 2004

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| In the Matter of | : | |
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| RAYMOND JAMES FINANCIAL SERVICES, INC., | : | ORDERS ON RECONSIDERATION AND ADDITIONAL SUBPOENAS |
| J. STEPHEN PUTNAM, and | : | |
| DAVID LEE ULLOM | : | |

The Securities and Exchange Commission (“Commission”) initiated this proceeding on September 30, 2004, with an Order Instituting Proceedings (“OIP”). Pursuant to the order issued December 9, 2004, and at the parties’ request, the hearing will begin in Tampa, Florida, on January 31, 2005. An Initial Decision is due on, or before, August 1, 2005.

On November 30, 2004, I denied Raymond James Financial Services, Inc.’s (“Raymond James”) request for subpoenas duces tecum to the Commission, the National Association of Securities Dealers (“NASD”), the New York Stock Exchange (“NYSE”), and seventeen Brite Business Corporation (“Brite Business”) associates or investors.

On December 8, 2004, Raymond James submitted a Motion for Reconsideration of the Order Denying Subpoenas or, in the Alternative, Motion Requesting Certification for Interlocutory Appeal (“Motion for Reconsideration”), pursuant to Rule 400 of the Commission’s Rules of Practice. 17 C.F.R. § 201.400. Raymond James submitted twenty more subpoenas with the Motion for Reconsideration.¹ On December 13, 2004, Raymond James submitted an additional twelve subpoenas for my signature.

On December 15, 2004, the Division of Enforcement (“Division”) and the Commission’s Office of General Counsel (“GC”) filed an opposition to the Motion for Reconsideration.

In a letter dated December 14, 2004, Raymond James requested that the fifty-one subpoenas it requested be issued inasmuch as only two subpoenas were opposed by the Division and GC. On December 16, 2004, Raymond James filed a reply brief to the Division and GC’s December 15 opposition that requested: (1) nineteen subpoenas be issued because there are no

¹ The Motion for Reconsideration consists of a memorandum in support, Exhibits A and B, twenty-one revised subpoenas, and twenty new subpoenas. Exhibit A is an eight-page chart identifying the recipient of the subpoena in column one, the nature of the recipient in column two, the claimed relevance of the material sought in column three, and whether the subpoena is revised or new in column four. Each of the forty-one subpoenas has an individual multi-page justification. It would be helpful if the parties presented materials in sets that are arranged in alphabetical order.

objections; (2) the two subpoenas to the Commission be issued “without modification because they seek both relevant and material information necessary for [Raymond James]’s defense”; or (3) alternatively, “in light of the Division’s objections to only portions of these subpoenas, the subpoenas should be modified based on considerations of fairness and issued expeditiously.” (December 16 Reply Brief at 2.)

On December 16, 2004, Raymond James submitted thirteen more subpoenas for a total of sixty-six.

On December 20, 2004, the Division and GC filed an opposition to Raymond James’s request for issuance of subpoenas to eight current and former Commission officials.

On December 21, 2004, Raymond James submitted a reply brief addressing the December 20 opposition of the Division and GC.

Motion for Reconsideration

Raymond James argues that denial of the twenty-one subpoenas was grossly prejudicial and hinders its ability to defend itself. (Motion for Reconsideration at 6.) Raymond James contends that the materials it seeks come within the broad interpretation of relevance used in connection with the Federal Rules of Civil Procedure (“FRCP”), and that its original subpoenas are more limited in scope than the Commission’s investigative subpoenas. (Id. at 6 n.3, citing a 2002 subpoena to Dennis Herula who pled guilty in a related criminal matter; Prehearing Conference Tr. 29.) The Motion for Reconsideration insists that the revised subpoenas seek relevant and material information necessary for Raymond James’s defense. (Id. at 6-7.) Raymond James argues that it needs information to defend itself from the allegation that it violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4 thereunder. (Id. at 4.) Raymond James believes that Commission documents and information will demonstrate that Rule 17a-4 is unenforceable because, in adopting the rule, the Commission did not comply with the Paperwork Reduction Act and the National Securities Market Improvement Act. (Id. at 7.) Raymond James further argues that it needs to subpoena the NASD and NYSE for material to establish its good faith compliance efforts by showing “the regulatory guidance and perception that was common in the industry during 1999 regarding e-mail retention.” (Id. at 8.)

From participants and investors in the fraudulent scheme, Raymond James seeks to obtain, via subpoenas, information regarding:

representations made to them; funds invested and received; arrangements or agreements between the participants in the scheme themselves and the purported victims; contact between these persons and [Raymond James]; and any arrangement between these people and the government and Commission relating to cooperation, consideration provided by the government, or the hope of these purported victims of receiving benefits from this proceeding.

(Id.)

The First Revised Subpoena to the Commission

The first revised subpoena to the Commission seeks nine categories of documents.²

(1) Category one seeks all documents reflecting communications between Commission staff and representatives of the Securities Industry Association (“SIA”), NASD, NYSE, and North American Securities Administrators Association (“NASAA”) relating to “technical, practical, and/or economic issues and problems involving the retention of electronic communications experienced by the securities industry in complying with Rule 17a-4.” (Subpoena Attachment A.). The request includes, without limitation, the records of Michael Macchiaroli, Richard Lindsey, Annette Nazareth, Bob Colby, Tom McGowan, Lori Richards, Arthur Levitt, Laura Unger, and the staff of the Division of Market Regulation;

(2) Category two requests all documents relating to complaints, investigations, and/or actions against David Ullom;

(3) Category three seeks “all audit or examination programs, procedures, instructions, guidance or other documents” relating to the conduct and procedures used in Commission audits, examinations, and self-regulatory organization oversight relating to retention or maintenance of electronic material;

(4) Category four is for all documents concerning Dorian Brisbois, Michael A. Clarke, Ian Doidge, Johan Hertzog, Dennis Herula, Farouk Khan, Claude Lefebvre, Charles Sullivan, Robert Wachtel, Mary Lee Capalbo, David Ullom, Martin Fife, Brite Business S.A., Brite Business Corp., Legacy 2000, Foxhill Management, and/or Seaview Development & Holdings, Ltd., including, but not limited to, communications with other government agencies regarding these persons and any analyses of receipts or disbursements, agreements or correspondence related to these persons, to the extent the documents were not provided to Raymond James as part of the investigative file;

(5) Category five is for all documents concerning Four Star Financial Services LLC, Mark Cohn, Lewis Blackburn, Rashed Mohamed Mahran Al Bloushi, Bill Britt, Robert Curl, Robert Fitzhenry, Mohamed Hamad, Malcolm Monlezun, Rheume Holdings, Ltd., Beehive International LLC, Robert Burr, and Trigon Capital, including, but not limited to, communications with other government agencies regarding these persons and any analyses of receipts or disbursements, agreements or correspondence related to these persons, to the extent the documents were not provided to Raymond James as part of the investigative file;

(6) Category six is for all documents relating to RMO Assets Management SA, Watch Hill Capital Management LLC, K. Mack Robinson, Comet Enterprises, LLC, Joseph Coors, Jr., Merrill Lynch, Pierce, Fenner & Smith (relating to Claude Lefebvre and/or Dennis Herula) and/or Jim Pell, including, but not limited to, investigative files;

(7) Category seven is for documents relating to the conviction and sentencing of Dennis Herula;

² All categories in the first revised subpoena to the Commission seek information from 1997 through 2002, except Category one, which requests all documents for the time period beginning January 1997 through 2001.

(8) Category eight is for documents relating to the likelihood of future violations by Raymond James as a result of the conduct described in the OIP; and

(9) Category nine is for any disbursements or analyses of funds related to funds Raymond James received or retained as a result of conduct detailed in the OIP.

The Second Revised Subpoena to the Commission

The second revised subpoena to the Commission seeks all documents:

- (1) Relating to the Commission's appointment of administrative law judges;
- (2) Regarding the duties the Commission has delegated to administrative law judges;
- (3) Reflecting rules, procedures, standards, methodology, and/or guidelines for appointing administrative law judges;
- (4) Reflecting that administrative law judges are appointed by the President of the United States.

Revised Subpoenas to NASD and NYSE

The revised subpoenas to the NASD and the NYSE are almost identical. For the time period from January 1997 through 2001, the subpoenas seek:

- (1) All documents reflecting communications between the NASD and the staff of the Commission, representatives of the Securities Industry Association ("SIA"), NYSE, and/or the NASAA relating to technical, practical, and/or economic issues and problems involving the retention of electronic communications experienced by the securities industry in complying with Rule 17a-4.
- (2) All audit or examination programs, instructions, guidance or other documents utilized by the NASD in connection with its performance of audits, or examinations of broker-dealers, relating to the retention or maintenance of records in electronic format, including, but not limited to, emails, or other electronic communications for the period 1997 through 2001.
- (3) All documents reflecting communications with the [Commission] relating to the enforcement of and application of standards relating to the retention of emails from 1997 through 2001.

(NASD Subpoena Attachment A.)

Revised Subpoenas to Seventeen Brite Business Investors or Associates

Raymond James asserts that it does not have information about the fraud that was the gravamen of the proceeding because it was conducted "away" from Raymond James, and Dennis Herula and David Ullom have refused to speak with Raymond James's representatives. (Request for Blackburn Subpoena at 2 n.1.) Raymond James contends these subpoenas should be granted

because the materials sought are relevant under the FRCP. (Id. at 2.) The original subpoenas covered the period from 1996 to the present, while most of the revised subpoenas cover the time period from 1997 through 2001.

Lewis Blackburn

The time period and the addition of three new sources – Beehive International LLC, Robert Burr, and Trigon Capital, are the only material changes I could find between the original and revised subpoena to Lewis Blackburn (“Blackburn”). The OIP alleges that some of the \$11.75 million that Four Star Financial Services invested in Brite Business was invested through an intermediary, Blackburn, and that Dennis Herula sent a letter in early March 2000 on Raymond James letterhead to Blackburn. (OIP at 4, 7.) The revised subpoena seeks all documents, including documents created earlier but which were used since then, in relation to these matters, that “relate to any business relationship, arrangement, or dealings, or which relate to any investment, with, by, concerning, involving, or regarding any of” thirty-two individuals or entities, and it seeks all documents in four additional categories.

Raymond James states six reasons for the revised Blackburn subpoena:

- (1) It is essential that Raymond James receive any documents that Blackburn has “with regard to any of the individuals the Commission claims were part of the Brite Business scheme”;
- (2) So that Raymond James can challenge the veracity of the Commission’s witnesses and specifically cross-examine Blackburn if the Commission calls him to testify;
- (3) In order to determine the motivation of investors in Brite Business;
- (4) Because Blackburn might provide information for Raymond James’s defense;
- (5) To defend against disgorgement and demonstrate apportionment if the Commission fails to do so; and
- (6) To challenge Blackburn’s independence with respect to any deals or arrangements that may have been offered to him for his assistance or testimony. (Request for Blackburn Subpoena at 3-5.)

Rashed Mohamed Mahran Al Bloushi

The revised subpoena to Rashed Mohamed Mahran Al Bloushi (“Al Bloushi”) covers the period from 1996 to the present. The OIP alleges that Al Bloushi invested \$7.5 million in Brite Business based on fraudulent information. (OIP at 4.) I could not find any material differences between the revised subpoena and the original subpoena. Raymond James wants the Al Bloushi subpoena for the same reasons it wants the Blackburn subpoena. (Request for Al Bloushi Subpoena at 3-6.)

Dorian Brisbois

The revised subpoena to Dorian Brisbois (“Brisbois”) seeks all documents that the original subpoena sought with the addition of three new sources – Beehive International LLC,

Robert Burr, and Trigon Capital. According to Raymond James, there is investigative testimony that Brisbois was a client of Dennis Herula, he introduced Dennis Herula to Martin Fife, the president of Brite Business Corporation, and Brisbois introduced investors to Dennis Herula. (Request for Brisbois Subpoena at 2.) Raymond James claims it needs this subpoena, and every other subpoena to Brite Business investors or associates, in order to have appropriate information to present its defense.

Bill Britt

The revised subpoena to Bill Britt (“Britt”) covers the period from 1997 to 2002. It seeks all the documents that the original subpoena sought with the addition of three new sources: Beehive International LLC, Robert Burr, and Trigon Capital. According to Raymond James, Britt is allegedly associated with Beehive International LLC, which invested in Brite Business, and it is essential that Raymond James have information about the “relationship between Britt and Brite Business, Brite Business representatives or Brite Business associates, and any documents reflecting Britt’s investment in Brite Business.” (Request for Britt Subpoena at 2.) Raymond James’s reasons for wanting to subpoena this information are the same as described above.

The revised subpoenas to Michael A. Clarke, Mark Cohn, Robert Curl, Ian Doidge, Robert Fitzhenry, Mohamed Hamad, Johan Hertzog, Dennis Herula, Farouk Khan, Claude Lefebvre, Malcolm Monlezun, Charles Sullivan, and Robert Wachtel, are similar to those described above. Again, while the time period is slightly shorter, they seek most of the material the original subpoenas sought.

Twenty New Subpoenas Submitted With Motion for Reconsideration

Raymond James claims that twenty subpoenas to the following persons and entities, returnable December 30, 2004, are necessary to provide it with information for its defense:

Accenture;
Arthur Andersen, LLP;
The Bank of New York;
Bear Stearns Securities Corp.;
Brown Brothers Harriman & Co.;
CIBC Wood Gundy;
Citibank;
SG Cowen Securities Corporation;
Deloitte & Touche;
Dreyfus Corporation;
E*Trade Financial Corp.;
Fleet National Bank;
Fireman’s Fund Insurance Co.;
First National Bank of Florida;
Merrill Lynch & Co., Inc.;
JP Morgan Chase;
NASAA;
Provident Investment Council;
Charles Schwab; and

Wachovia Corporation.

Raymond James's subpoenas to Accenture, Arthur Andersen LLP, and Deloitte & Touche are attempts to reach information that had been in the control of Arthur Andersen LLP. (Request for Accenture Subpoena at 2.) These subpoenas seek: (1) all documents relating to Ian Doidge, Martin Fife, Brite Business, and/or Dennis Herula; (2) retainer or any service agreements to or involving Martin Fife, Ian Doidge, and/or Charles Sullivan; and (3) personnel or employment records for Ian Doidge from 1998 through 2002.³

Raymond James's subpoenas to The Bank of New York, Brown Brothers Harriman & Co. ("Brown Brothers"), CIBC Wood Gundy ("CIBC"), SG Cowen Securities Corp., ("SG Cowen"), E*Trade Financial Corp., Fireman's Fund Insurance Co., Fleet National Bank, First National Bank of Florida, Merrill Lynch & Co., JP Morgan Chase, Provident Investment Council, Charles Schwab, and Wachovia Corp. seek all documents from 1997 through 2002, relating to Martin Fife, Brite Business, Dennis Herula, David Ullom, Mary Capalbo, Claude Lefebvre, Dorian Brisbois, Michael Clarke, Ian Doidge, Johan Hertzog, Farouk Khan, Charles Sullivan, and/or Robert Wachtel. The subpoenas to CIBC and SG Cowen also seek all documents related to Al Bloushi and/or Mohamed Hamad. The subpoena to Charles Schwab also seeks any documents "relating to Legacy 2000, Dennis Herula's Investment Advisor." (Charles Schwab Subpoena, Attachment A.)

According to Raymond James, Brite Business associates solicited The Bank of New York, Brown Brothers, and Provident Investment Council to become involved in Brite Business's investment program, and there is evidence that The Bank of New York, with assistance from Provident Investment Council, agreed to "do a reverse repurchase agreement with a T-Bill held in the account at [Raymond James]." (Request for The Bank of New York Subpoena at 1-2; Request for Brown Brothers Subpoena at 1-2; Request for Provident Investment Council Subpoena at 2.) Raymond James claims that Brite Business maintained an account at CIBC and that it may have pertinent information about representations made to solicit investors, the nature of the underlying investment scheme, and the "balance sheet enhancement program." (Request for CIBC Subpoena at 1-2.) Raymond James also claims that Al Bloushi maintained an account at SG Cowen. (Request for SG Cowen Subpoena at 1-2.)

Raymond James's subpoena to Bear Stearns Securities Corp. ("Bear Stearns") seeks the same information as above for the same time period from all the same sources and, in addition, from Foxhill Management. The subpoena to Citibank seeks the same information for the same time period and, in addition, from Commonwealth Management Associates and Four Star Financial Services. Raymond James states that Bear Stearns may have executed or held and engaged in transactions in treasury bonds for Brite Business, that Brite Business representatives solicited Citibank to become involved in its investment program, and that Brite Business had an account at Citibank, which received funds from the Brite Business account at Raymond James. (Request for Citibank Subpoena at 1-2.)

Raymond James's subpoena to the Dreyfus Corporation seeks from 1997 through 2002: (1) all documents regarding the employment or affiliation of Martin Fife with Dreyfus Mutual

³ On December 13, 2004, Raymond James submitted subpoenas for my signature that requested similar information from Ernst & Young, Five Star Capital Ltd., and Yield Curve Solutions Ltd.

Funds (“Dreyfus”); (2) biographical information about Mr. Fife; and (3) any documents showing Mr. Fife as an officer, director, or agent of Dreyfus, or an affiliate.

Raymond James’s subpoena to the NASAA seeks identical information for the same time period as the revised subpoenas to the NASD and NYSE personalized to the NASAA.

Twelve Subpoenas Submitted December 13, 2004

Raymond James professes to need the materials covered by the following subpoenas, which are returnable January 5, 2005, to present its defense.

Robert Colby, Deputy Director, Division of Market Regulation;
Ernst & Young;
Five Star Capital Ltd.;
Arthur Levitt, former Commission Chairman;
Richard Lindsey, former Director, Division of Market Regulation;
Michael Macchiaroli, Associate Director, Division of Market Regulation;
Tom McGowan, Assistant Director, Division of Market Regulation;
Annette Nazareth, Director, Division of Market Regulation;
Salvatore Pallante, former Executive Vice President, NYSE;
Lori Richards, Director, Office of Compliance, Inspections, and Examinations;
Laura Unger, former Commissioner and Acting Chairman; and
Yield Curve Solutions, Ltd.

Raymond James’s subpoenas to Robert Colby (“Colby”), Arthur Levitt, Richard Lindsey, Michael Macchiaroli, Tom McGowan, Annette Nazareth, Lori Richards, and Laura Unger seek the same or similar documents covered in the revised subpoenas to the NASD and NYSE from 1997 through 2001. Raymond James’s subpoena to Salvatore Pallante seeks the same information from the perspective of the NYSE, where, according to Raymond James, Mr. Pallante was a former Executive Vice President.

All documents reflecting communications between you or the Staff of the Commission and industry members, representatives of the SIA, the NASD, NYSE, and the NASAA relating to technical, practical, and/or economic issues and problems involving the retention of electronic communications experienced by the securities industry in complying with Rule 17a-4. (Colby, Levitt, Lindsey, Subpoenas Attachment A.)

Raymond James claims that Colby has information that will aid its defenses that: (1) the Commission did not follow proper rulemaking procedures; (2) the Commission knew the industry was having problems complying with Commission policies concerning electronic record retention; and (3) Commission staff advised industry members that it would be “flexible” regarding the requirement. (Colby Subpoena Request at 2-3.)

Raymond James’s subpoenas to Ernst & Young, Five Star Capital Ltd., and Yield Curve Solutions Ltd., seek: (1) all documents relating to Ian Doidge, Martin Fife, Brite Business, and/or Dennis Herula; (2) retainer or any service agreements to or involving Ian Doidge, Martin Fife, Brite Business, and Charles Sullivan; and (3) the personnel or employment records for Ian Doidge from 1998 through 2002. Raymond James states that it seeks information as to Mr.

Doidge to establish the reasonableness of its belief that Messrs. Doidge and Fife, Brite Business and others were reputable, with extensive credentials and bona fides.

Thirteen Subpoenas Submitted December 16, 2004

Raymond James professes to need the materials covered by thirteen subpoenas, which are returnable January 7, 2005, to present its defense.

Raymond James seeks the following information from Abbott Capital Management, LLC (“Abbott”) for the period 1997 through 2002:

1. All documents, relating to Martin Fife, Brite Business, Dennis Herula, David Ullom, Mary Capalbo, Claude Lefebvre, Dorian Brisbois, Michael Clarke, Ian Doidge, Johan Hertzog, Farouk Khan, Charles Sullivan, Robert Wachtel, Legacy 2000, and/or Seaview Development Holdings, Ltd.; and
2. All documents relating to the receipt of funds on or about December 4 or 5, 2000, from any of these named persons or entities relating to the utilization, acquisition, or disbursement of funds. (Abbott Subpoena Attachment A.)

Raymond James believes that funds were transferred from Mary Capalbo’s account at Raymond James to Imperial Bank for the benefit of Abbott, which may have come from purported investors in the Brite Business scheme. (Request for Capalbo Subpoena at 2.)

Raymond James seeks similar information from the Asia Europe Americas Bank, Banc of America Securities, Bank of America, Capital Dynamics, City National Bank, Citizen Banking Corp. Inc., John Newsome, Northern Trust Bank Company, Lawrence Taggart,⁴ Washington Mutual Bank, Paine Webber Group International Banking Corp., and Wells Fargo Bank. Each subpoena specifies a different date(s) for the transfer of funds in number 2. The reason given for the subpoenas is that the cash flows may have come from purported investors in the Brite Business scheme.

RULING

I disagree with Raymond James that: (1) the twenty-one revised subpoenas are materially different from the subpoenas I denied on November 30, 2004; (2) the Division and GC objected to only portions of the two revised subpoenas to the Commission; and (3) it is significant that there have been no objections to nineteen subpoenas, when the intended recipients had no way of knowing about the subpoenas.

I DENY the Motion for Reconsideration. The Commission’s standard is that subpoenas should not be unreasonable, oppressive, excessive in scope, or unduly burdensome. 17 C.F.R. § 201.232. Raymond James’s revised subpoenas fail to meet that standard. As is evident from the descriptions set forth above, every subpoena is broad in scope and seeks a great deal of information about multiple people, businesses, or institutions for a four- or five-year period. The subpoenas are also unreasonable because each recipient would have to expend considerable time and effort to meet a very short deadline in the middle of a holiday season in time for the January

⁴Mr. Taggart’s subpoena covers the period 1999 through 2001.

31, 2005, hearing.⁵ The subpoenas are oppressive and unduly burdensome because considerable time, energy, and financial resources would be needed to achieve compliance. The subpoenas are excessive in scope for several reasons, including: (1) they seek information about affirmative defenses that I have stricken; (2) they are duplicative in that they seek the same information from multiple sources; and (3) much of the information sought is beyond the allegations in the OIP, but rather about the activities of others that Raymond James believes will be useful in its defense.

Raymond James's central argument rests on the concept of relevance as used in the FRCP. However, the FRCP do not govern Commission administrative proceedings, and they are not helpful where the Commission's rules are clear and unambiguous. See Clark T. Blizzard, 77 SEC Docket 1505, 1510-11 n.17 (April 23, 2002). The Commission's Rules of Practice do not allow large-scale and time consuming pre-trial discovery similar to that conducted under the FRCP. (See 59 SEC Docket 1546, 1572-73 (comments to Rule 232 of the Commission's Rules of Practice.)) In July 2003, the Commission implemented time limits for the completion of administrative proceedings. See 17 C.F.R. § 201.360(a)(2). The maximum time allowed for completion of an initial decision is three hundred days from service of the OIP. This time constraint affirms the Commission's traditional practice of limited discovery.

I DENY the twenty subpoenas Raymond James submitted on December 8, 2004, the twelve subpoenas submitted on December 13, 2004, and the thirteen subpoenas submitted on December 16, 2004, for all the reasons stated above.

I reject Raymond James's claim that I did not follow the Commission's Rules of Practice when I denied subpoenas that were unreasonable, oppressive, excessive in scope, and unduly burdensome on their face without allowing the parties to point those facts out to me. (Motion for Reconsideration at 6 n.3.) When time is an important consideration, there is no need for delay in ruling, especially when something is so obviously contrary to the Commission's rules. See 17 C.F.R. § 201.111.

I DENY Raymond James's request that I certify my denial of the Motion for Reconsideration to the Commission because it does not satisfy the requirements of Rule 400(c). Rule 400(c) specifies that a hearing officer shall not certify a ruling unless:

(1) [the] ruling would compel testimony of Commission members, officers, or employees or the production of documentary evidence in their custody; or

(2) upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that:

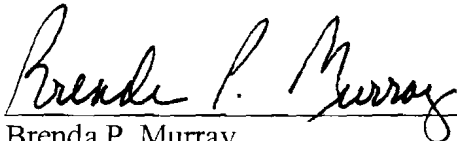
(i) the ruling involves a controlling question of law as to which there is a substantial ground for difference of opinion; and

(ii) an immediate review of the order may materially advance the completion of the proceeding. 17 C.F.R. § 201.400(c).

⁵ At the prehearing conference, I explained that the parties' hearing date of January 31, 2005, was the latest I could possibly agree to in order to meet the Commission's three-hundred-day deadline.

Raymond James offers no support for its claim that if the Motion for Reconsideration is denied, “there is the likelihood that substantial harm will result and [Raymond James] will be forced to defend this action without critical evidence.” The Division has the burden of proving the allegation in the Order OIP by a preponderance of the evidence. With limited exceptions, the Division made its investigative file, which is the evidentiary basis for the OIP, available to Raymond James, on October 4, 2004, including materials pursuant to Brady v. Maryland, 373 U.S. 83, 87 (1963). See 17 C.F.R. § 201.230(b). Raymond James will receive the names of the Division’s witnesses and exhibits, and information on expert witnesses on December 30, 2004, and it will receive copies of the trial exhibits on January 18, 2005. Raymond James will have an opportunity at the hearing to dispute the Division’s evidence by cross-examining the Division’s witnesses, and introducing evidence in its rebuttal case.

IT IS SO ORDERED.


Brenda P. Murray
Chief Administrative Law Judge