

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
February 10, 2005

In the Matter of :
:
RAYMOND JAMES FINANCIAL : ORDER ON MOTION TO QUASH
SERVICES, INC., :
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”). The hearing commenced on January 31, 2005, continued through February 4, 2005, and will resume on February 14, 2005. An Initial Decision is due on, or before, August 1, 2005.

On January 6, 2005, I signed subpoenas requiring three Commission officials to testify in the proceeding: Michael Macchiaroli, Associate Director, Division of Market Regulation; Annette Nazareth, Director, Division of Market Regulation; and Lori Richards, Director, Office of Compliance Inspections and Examinations. Kathleen A. Cody of the Commission’s Office of General Counsel accepted service of the three subpoenas on January 27, 2005.

The Commission filed a motion to quash the three subpoenas on February 2, 2005. The Commission argues that: (1) testimony of Commission officials is immaterial to a challenge to Rule 17a-4 of the Securities Exchange Act of 1934; (2) staff testimony does not constitute an official expression of the Commission’s position; and (3) the subpoenas violated Rule 232 of the Commission’s Rules of Practice in that they are unreasonable, oppressive, excessive in scope, and unduly burdensome. 17 C.F.R. § 201.232(b).

At the hearing on February 4, 2005, Raymond James Financial Services (“Raymond James”) replied to the motion to quash. (Tr. 1193-99.)¹ Raymond James has withdrawn the subpoena to Michael Macchiaroli, but it wants to reserve the right to call Annette Nazareth and Lori Richards depending on the direct case of the Division of Enforcement. (Tr. 1194.) If it decides to call either or both of these Commission officials, the focus of Raymond James’s inquiry will be their “personal knowledge of communications with the broker/dealer industry concerning the scope, the interpretation and, importantly, the enforcement of [Rule 17a-4].” (Tr. 1197.) Raymond James maintains that the Commission, following a Release in 1997, made clear that it would work through the practical problems of e-mail retention with the industry. (Tr. 1197-98.)

Ruling

¹ Citations to the hearing transcript will be noted as (Tr. ___.)

The issues at hand are not whether Commission officials can speak for the Commission, or whether Commission officials can address the constitutionality of the Commission's actions, they cannot. Raymond James's application for the subpoenas represented that the testimony of the officials was "regarding the SEC's communications about and positions on the regulation of electronic mail retention and storage." This purpose was reaffirmed by Raymond James's statements made at the hearing in opposition to the motion to quash. Raymond James's claim that the Commission represented informally that it would work with the broker dealer industry on the practical problems of e-mail retention could be relevant to allegations in the OIP that Raymond James violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4 thereunder. It might be inconvenient, but it certainly is not unreasonable, oppressive, excessive in scope, or unduly burdensome for Commission officials to testify in a Commission proceeding when a respondent makes a reasonable showing that the information they possess could possibly assist in its defense.

For these reasons, I DENY the motion to quash the subpoenas to Annette Nazareth, Director, Division of Market Regulation, and Lori Richards, Director, Office of Compliance Inspections and Examinations.

Brenda P. Murray
Chief Administrative Law Judge