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BY E-MAIL

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Securities and Exchange Commission
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Re: Comment: File No. SR-NASD-2003-158
Amendments to NASD Arbitration Rules for Customer Disputes

Dear Mr. Katz:

Thank you for the opportunity to comment on NASD's proposed changes to its arbitration code.

I write as one who is a former member of the enforcement division staff of the Securities and Exchange Commission ("SEC"), as a current arbitrator in NASD arbitrations, and as an advocate for investors in NASD securities arbitrations.

The amended NASD Code of Arbitration is an enormous improvement over what we have now. It is well organized, generally well written, and much more user friendly than the current code. NASD should be commended for recognizing the need to reorganize the code and for undertaking so difficult a task.

My additional comments follow.

Rule 12300. Filing and Serving Documents

Provision should be made for the claimant to serve respondents with the Statement of Claim and Uniform Submission Agreement directly. This would be especially important where time is of the essence.

For example, we recommend in our comment to Proposed Rule 12510 that a party be able to depose a witness under certain exigent circumstances before the arbitrators have been empaneled. To accommodate this need, claimants should be permitted to serve respondents with the Statement of Claim and the Uniform Submission Agreement directly, with sufficient copies to the NASD to satisfy Proposed Rule 12302 (less the copies served on respondents). Proof of service should be provided to the NASD sometime before the Answer is due.

A claimant may serve a person currently associated with an NASD member in a fashion similar to that prescribed in Proposed Rule 12301.

Rule 12302. Filing an Initial Statement of Claim

We recommend that Proposed Rule 12302(b) (Number of Copies) be modified to account for the possibility that the claimant serves the Statement of Claim and the Uniform Submission Agreement directly on the respondents. (See our comments on Proposed Rules 12300 and 12510.)

Rule 12303. Answering the Statement of Claim

This rule should carry over from the current rule the standard for extending the time to answer. Proposed Rule 12207© provides: " The Director may extend or modify any deadline or time period set by the Code for good cause, or by the panel in extraordinary circumstances." This sets a less stringent standard for extending the time to file an answer than currently exists. Current Rule 10314(b)(5) provides in relevant part "Extensions of the time period to file an Answer are disfavored and will not be granted by the Director except in extraordinary circumstances."

The current standard should be retained. A number of years ago, the NASD extended the time to answer from thirty days to forty-five day. At the same time, the NASD indicated it would not grant extensions to the new, forty-five day answering deadline as easily as it had in the past, and it added the quoted provision to what is now Rule 10312(b)(5).

Now under the new rules, the accommodation the NASD made to balance the interests of the parties has been changed. It is more lenient than necessary. The "extraordinary circumstances" standard for extending deadlines for Answers should be retained.

Rule 12308. Loss of Defenses Due to Untimely or Incomplete Answer

The sanctions in this rule do not parallel the sanctions imposed on claimants for analogous conduct and should be strengthened. The Proposed Rules require that all parties file their pleadings and the Uniform Submission Agreement with the NASD. *See, e.g.*, Proposed Rules 12302, & 12303. They diverge in their treatment of a failure to file the Uniform Submission Agreement.

A claimant who fails to file a Uniform Submission Agreement will not have his claim transmitted to the arbitrators. Indeed, his claim becomes – in effect – a nullity. *See* Proposed Rule 12307. A respondent who fails to file a Uniform Submission Agreement may continue with the arbitration as though it has fulfilled its obligations. In fact, no rule even addresses a respondent's failure to file a Uniform Submission Agreement. This places the claimant at a disadvantage.

The filing of a Uniform Submission Agreement by the respondent serves an important purpose

The Uniform Submission Agreement is necessary to supplement the arbitration agreement. By use of the Uniform Submission Agreement the parties identify the issues they are willing to present to the arbitrators and the rules the arbitrators should apply. This supplementation of the arbitration agreement empowers the arbitrators to perform functions that the arbitration agreement or the NASD rules alone may not do. *See Executone Info. Sys., Inc. v. Davis, 26 F.3d 1314, 1323 (5th Cir. 1994)* ("It is well settled that the arbitrator's jurisdiction is defined by both the contract containing the arbitration clause and the submission agreement. If the parties go beyond their promise to arbitrate and actually submit an issue to the arbitrator, we look both to the contract and to the scope of the submissions to the arbitrator to determine the arbitrator's authority." (citations omitted) ; *see also Piggly Wiggly Operators' Warehouse, Inc. v. Piggly Wiggly Operators' Warehouse Indep. Truck Drivers' Union Local No. 1*, 611 F.2d 580, 583 (5th Cir. 1980) ("Before arbitration can actually proceed, it is necessary for the parties to supplement the agreement to arbitrate by defining the issue to be submitted to the arbitrator and by explicitly giving him authority to act."). *See also In re Ras Securities Corp.*, 251 A.D.2d 98, 674 N.Y.S.2d 303 (N.Y. App. Div., 1st Dep't 1998) ("The parties explicitly agreed in their Uniform Submission Agreements to submit attorneys' fees to arbitration, and the arbitrators were thus empowered to award such fees pursuant to that contractual provision, regardless of whether there was a cognizable basis for such an award in a judicial forum.")[1]

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[1] The *Ras* court does not discuss whether the Uniform Submission Agreement was the NASD standard agreement which provides in part:

> The undersigned parties hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the Constitution, By-Laws, Rules, Regulations, and/or Code of Arbitration Procedure of the sponsoring organization.

However, the arbitration was an NASD arbitration, and if the Uniform Submission Agreement had been modified to expressly permit the arbitrators to grant attorneys fees instead of the all encompassing statement above, a motion to vacate the award with respect to attorney's fees probably would not have been filed, or would have been based upon some other ground, for example, that the fees awarded were excessive.

We recognize that unless a claimant files an executed Uniform Submission Agreement the NASD may not have jurisdiction. This is especially the case where the customer/claimant has not signed an arbitration agreement and relies upon the "requested by the customer" provisions of Proposed Rule 12200 to force the respondent to arbitrate. We also recognize that NASD members and associated persons must arbitrate by virtue of either their membership in the NASD or by signing a Form U-4.

Nevertheless, it is appropriate and necessary for respondents to file a Uniform Submission Agreement if claimants are not to be prejudiced. As discussed above, the Uniform Submission Agreement sets the parameters of the arbitrators' power. Moreover, in order to confirm an arbitration award, a party must comply with Section 13 of the Federal Arbitration Act, which requires, among other things, that the party filing the petition to confirm file the agreement to arbitrate.[2] If the parties never signed an arbitration agreement, the claimant is forced to travel a circuitous route to prove to the court that the respondents were required to arbitrate even though, for example, the parties never entered into an arbitration agreement and respondents never filed an executed Uniform Submission Agreement.

This same problem arises in the common circumstance where the claimant does not have a copy of the arbitration agreement. Sometimes respondents possess the only copy of the agreement, and even if the respondent/broker-dealer finds the copy and produces it in discovery, it is illegible because it was retained on microfiche.

Thus, the filing of an executed Uniform Submission Agreement by respondents serves an important purpose, a purpose that should not – as demonstrated below – be left to the arbitrators' discretion.

Enforcing the Uniform Submission Agreement requirement should not be left to arbitrators

As discussed above the Uniform Submission Agreement is basic to the ability of the arbitrators to consider the issues of the case and to employ the NASD rules. Just as the NASD assures that all claimants file their Uniform Submission Agreements in a timely fashion, the NASD should assure that the respondents file Uniform Submission Agreements in a timely fashion.

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[2] Section 13 provides in relevant part "The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award. . . .

9 U.S.C. § 13.

The filing of a Uniform Submission Agreement is a requirement; it is not optional. *See* Proposed Rule 12303(a). Yet, by not enforcing this requirement, the NASD exposes claimants to the vicissitudes of arbitrator decision making.

If the arbitrators fail to enforce the requirement or if the arbitrators fail to impose a sanction sufficient enough to force the filing, a claimant may find himself drawn into court by a respondent seeking to vacate the award. The claimant will spend more time and money trying to demonstrate that the arbitrators had jurisdiction over the respondent and their award should be confirmed. The claimant must then hope the court will rule in his favor over the objections of a respondent that claims it never signed a Uniform Submission Agreement and therefore never agreed to arbitrate.

The NASD rules should not expose investors to such shenanigans.

The appropriate sanction is to bar a respondent from participating in the arbitration

Just as the NASD refuses to transmit the Statement of Claim to the arbitrators unless a properly executed Uniform Submission Agreement is filed, so, too, the NASD should refuse to transmit the Answer to the arbitrators unless the respondent files a Uniform Submission Agreement.

Moreover, respondents should be barred from engaging in any arbitration-related activity until they file the Uniform Submission Agreement. The Proposed Rules require that both an Answer and the Uniform Submission Agreement be filed within forty-five days of receiving the Statement of Claim. Claimants are entitled to have respondents comply with this rule or be barred from participating in the arbitration. Under no circumstance should a party be permitted to participate in the arbitration by, for example, filing motions, participating in discovery, or attending a pre-hearing conference or the hearing itself without having filed both the Answer and the Uniform Submission Agreement. Moreover, if a respondent files the Answer without the Uniform Submission Agreement, the NASD should deem it not filed and refuse to transmit it to the arbitrators until the respondent files the Uniform Submission Agreement.

In addition, respondents should not be permitted to delay the proceedings indefinitely. A claimant is entitled to some predictability in the arbitration process. He should know whether his opponents plan to participate in the arbitration or not. The arbitrators are also entitled to such information for the purposes of scheduling the arbitration. Thus, if the respondent does not file both the Answer and Uniform Submission Agreement within a predetermined time, for example, ninety days, then the claimant should be entitled to a presumption that his opponent chooses not to participate in the arbitration, and unless the respondent can provide "substantial justification" for not filing both the Answer and the Uniform Submission Agreement within the ninety days it

cannot participate in any way in the arbitration process.[3] It cannot file motions; it cannot obtain discovery (but it would be required to provide discovery pursuant to a properly issued subpoena or an arbitrator's order); it cannot appear at – or even attend – a prehearing conference or a hearing.

In such a case, the rights provided by Proposed Rule 12602 would not apply, but the requirements of Proposed Rule 12603 would apply.

Claimants and respondents should be placed on the same footing. If claimants cannot go forward with their claim without filing a properly executed Uniform Submission Agreement, respondents should not go forward with their claim without filing a properly executed Uniform Submission Agreement. If claimants cannot go forward with their claim without filing a proper Statement of Claim, respondents should not go forward with their claim without filing a proper Answer. What is good for the public investor is good for the securities industry. This is especially true in a forum identified with the securities industry.

Rule 12501. Other Prehearing Conferences

The NASD claims there is no substantive change. Perhaps in practice this is true. The current rule (10321) requires a hearing to be scheduled at a party's request. Also, the wording of the current rule implies that the Director will appoint someone to preside over a pre-hearing conference, which could, in theory, take place before arbitrators are formally empaneled.

Under the proposed rule, the prehearing conference will be scheduled at the panel's discretion. Therefore, there are two significant changes: First, there is no authority to hold a

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[3] We recognize that some Answers are filed on behalf of more than one respondent, and sometimes one of the respondents on whose behalf the Answer is filed also files an executed Uniform Submission Agreement and another respondent on whose behalf the same Answer is filed does not file a Uniform Submission Agreement. Under these circumstances, the NASD should not transmit the Answer filed for both parties to the arbitrators.

This is the price a client pays for having retained counsel who has a conflict of interest. The attorney representing both respondents will have undoubtedly advised them of the possible conflict of interest and obtained their approval to represent both of them. The NASD should not be in the business of telling lawyers whether they have a conflict of interest. By the same token, the NASD should not be in the business of letting those who violate the rules circumvent the rules by associating themselves with those who comply with the rules. Nothing prevents the attorney who represents both parties from filing an Answer solely on behalf of the party in compliance.

prehearing conference with someone before arbitrators are empaneled. Second, the hearing is not required just because a party requests it.

Rule 12503. Motions

We have two comments. First, we oppose the requirement that motions filed within twenty days before the hearing require panel approval. Usually, motions filed withing twenty days of a hearing are filed because of an emergency, such as when an opposing party has not complied with a discovery order. Under the proposed rule, an opposing party has ten days in which to respond to a motion. By the time the NASD transmits the motion papers and the opposition papers to the arbitrators, in the best of circumstances, the arbitrators will have only a few days in which to rule. To interpose the additional hurdle of getting the panel's permission before the motion will be considered, reduces the amount of time available for the motion even further. This will increase motion practice, not decrease it. Under the proposed rule, adversaries will not only fight the merits of the motion, but in the first instance they will file papers opposing permission to file the motion.

The NASD provides no rationale for this portion of the rule. The arbitrators are not the United States Supreme Court. Parties should not have to seek a "*writ of certiorari*" before the arbitration panel will hear them.

Second, Proposed Rule 12503(a)(4) is ambiguous. We suggest the language in bold and underlined be added: "If a party moves to amend a pleading to add a party, the motion **and a copy of all accompanying papers, if any,** must be served on all parties, including the party to be added and the party to be added may respond to the motion in accordance with paragraph c) without waiving any rights or objections under the Code."

Rule 12506. Document Production Lists

Rule 12506(b) includes three changes: First, it increases the amount of time that the parties have to respond to document requests from thirty to sixty days. Second it adds a possible response to a document request. Under the new rule, parties not only have the option to produce documents or object to the production, parties now have a third responsive option:

> Identify and explain the reason that specific documents described in Document Production Lists 1and 2, and any other Document Production List that is applicable based on the cause(s) of action alleged, cannot be produced within the required time, and state when the documents will be produced . . . .

Third, parties must now produce documents that are "in their possession or **control**" (emphasis added).

As we discuss below, (1) a 60 day response time to a document request or the document lists is too long, (2) the addition of a third possible response to a document request invites abusive behavior, and (3) the use of the word "control" in this rule and others will make arbitration more expensive and increase motion practice.

Sixty days is too long to respond to the discovery lists or to a document request

The NASD proposes to extend the time to produce documents in response to a document request from 30 days to 60 days. In its comparison chart, the NASD justifies this change as follows:

> To address concerns of many frequent users of the forum that the current time frame to respond to discovery is unrealistic, and may therefore lead to unnecessary disputes, the Proposed Rule also would extend the initial time to respond to discovery lists from 30 to 60 calendar days.

This rationale cannot be taken in isolation. First, respondents know from the moment they are served with the Statement of Claim that in 75 days they must produce documents pursuant to the Discovery Guide. (Claimants know this even before the Statement of Clam is served.) Under both the current rules and the proposed rules, respondents have 45 days in which to respond to the Statement of Claim. Under the current rules, parties have an additional 30 days in which to respond to the Discovery Guide. In reality this is not 30 days, this is 75 days. (30 + 45) The requirements of the Discovery Guide are no secret and respondents know from the day they are served they have 75 days to produce documents. Indeed, along with the Statement of Claim, the NASD provides respondents with the Discovery Guide. Moreover, just as the documents required by the Discovery Guide help claimants prove their case, the same documents help respondents draft their Answers. Thus, respondents accumulate many of the documents before they prepare their Answer.

The new rule will give parties not 60 days in which to respond, but 105 (60+45) days to respond. This is much too long.

Second, the NASD's rationale for extending the time to respond to 60 days does not take into account the new alternative response to a document request. Under the current rules, a party has two options when he receives a document request: he can produce or object. (See NASD Code of Arbitration Procedure Rule 10321(b)) Under the proposed rules, parties may delay the production of documents if they have difficulty producing as long as they identify the document, give a reason for the delay, and provide a new deadline. *See* Proposed Rules 12506 & 12507. Given that this is now part of the Proposed Code, doubling the time in which a party has to produce documents is unnecessary.

Finally, extending the response time from 30 to 60 days for requests other than the Discovery Guide lists does not account for discovery requests made just prior to a hearing. Under

the proposed rules these requests will have to be made much more than 60 days before the hearing. Under the current system some parties withhold documents as long as they possibly can, hoping that by the time the arbitrators order them to produce the documents it will be so close to the hearing date the opposing party will have little time to review the documents and prepare for the hearing. As a practical matter, this will not change under the proposed rules.

But parties are often in the position where a review of a late document production indicates that other relevant documents should be requested in an additional production. Because these earlier productions are often made pursuant to an arbitrator's order and just before the hearing, permitting parties to respond up to 60 days after they receive a request assists parties who act in bad faith and whose goal is to prevent their adversaries from obtaining documents in a timely manner and with sufficient time to prepare for a hearing.

For the foregoing reasons, we submit that 30 days is more than enough time in which to respond to a document production.[4]

Adding a third possible response to a document request invites abusive behavior

As discussed above, under the proposed rules a party need not produce a document or object to its production. Under the proposed rules, the party may explain it non-production and unilaterally decide on a production deadline. The rule does not require reasonableness either in the explanation or in the deadline. Moreover, even if reasonableness were required, this rule is an invitation to abuse. The third option should be removed.

If it is not removed, the rule should provide for severe sanctions for abuse.

The use of the word "control" in the new rule will increase costs and motion practice

The current rules do not use the word "control" when discussing discovery. Under the Discovery Guide, the only document request that even uses the term "control" in the context of documents to be produced is List 1 request 3. This request requires the firm/Associated Person to produce "All confirmations for the customer's transaction(s) at issue. As an alternative, the firm/Associated Person(s) should ascertain from the claimant and produce those confirmations that are at issue and are not within claimant's possession, custody, or control." However, The imprecision of language in this rule is apparent when one realizes that if the customer does not have the confirms in his possession or custody, he must go to the respondent-firm to obtain them.

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[4] We note that Rule 34 of the Federal Rules of Civil Procedure requires only 30 days to respond to a document request. Often cases in federal court are much more complex and require the production of many more documents than NASD arbitrations.

The only other place where the word "control" is used in the context of discovery is the NASD's IM-10100, which provides "It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to: . . .© fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the NASD Code of Arbitration Procedure; . . . ."

Thus, under the current rule, the customer is never required to produce documents in his "control."

The meaning of the word "control" in the civil litigation discovery context has been the subject of countless disputes. There is no reason to assume that it will not become the subject of many disputes in the arbitration context. Under the new rules, customers may be forced to seek monthly statements and confirmation slips from broker-dealers with whom they formerly had or currently have accounts. If the broker-dealers charge the customers for these documents, the costs can be enormous. The customer is forced to pay these charges or violate the rule.

Moreover, the non-party broker-dealers can produce the documents at their leisure, which may also result in the customer violating the rule.

Broker-dealers complain now when they are parties to an arbitration that they have difficulty obtaining documents, such as confirmation slips. They will complain even more when they are not parties to an arbitration, and they are inundated with customer requests for monthly statements and confirmation slips, so that customers can satisfy the "control" requirements of this rule.

The word "control" with respect to customer production should be removed.

It is true that NASD members and persons associated with members must produce documents in their control, but a member/introducing broker-dealer, for example, may not have responsive documents that its clearing firm may have and are easily obtainable. An associated person may not have responsive documents that his employer may have and are easily obtainable. This is not analogous to an individual who is at the mercy of non-party broker dealers.

Under current practice, if a party thinks documents held by a third party are absolutely necessary, it can ask the arbitrators to subpoena the documents. The arbitrators can determine whether the documents truly are necessary and the cost of obtaining the documents is placed upon the party that insists that it needs them. This practice should not change.

Accordingly, the word "control" should be removed.

Rule 12507. Other Discovery Requests

A response to a discovery request should not be extended to sixty days. It should remain at thirty days.

Rule 12508. Objecting to Discovery; Waiver of Objection

The words "waiver" and "waived" should be changed to "forfeiture" and "forfeited."

Rule 12509. Motions to Compel Discovery

The Rule fails to allow for a number of situations relating to the NASD's new "delay provisions" created in Proposed Rules 12506 and 12507. Under Proposed Rule 12509 a party may file a motion to compel for only two reasons: (1) a failure to comply with Proposed Rules 12506 or 12507 or (2) to overcome an objection raised to produce documents. The rule does not allow for a bad faith assertion of the delay provisions, a failure to meet the deadline imposed by the party raising the delay provision, or the setting of a bad-faith deadline.

Thus a party may comply with Rule 12506 by identifying a document not produced, giving a reason for not producing, and setting another deadline of his choice. This complies with the rule, but it may still be worthy of a motion to compel for a number of reasons. For example, the reason the delaying party gives may be disingenuous, or the new deadline the delaying party creates may be unreasonably long under the circumstances, or even if the new deadline is reasonable, the delaying party does not meet it.

It is true that failure to comply with discovery is sanctionable under Proposed Rule 12511. But if a motion for sanctions were the same thing as a motion to compel discovery, this Proposed Rule (12509) would be surplusage. Moreover, as discussed in our comment for rule 12511, a bad faith use of the delay provisions is not subject to sanctions.

As long as Proposed Rule 12509 identifies all reasons for which a motion to compel may be filed, then it should also identify as cause to move to compel a bad faith or unreasonable assertion of the delay provisions, an unreasonably long new deadline, a failure to meet a deadline, and other abuses of the delay provisions.

Rule 12510. Depositions

This rule provides that the arbitrators must approve a deposition. Under the proposed rules and under the best of circumstances, arbitrators are not appointed until more than three months after the Statement of Claim is filed. Sometimes an important witness may not live that long.

We suggest that a procedure be included that permits the taking of a deposition before the arbitration panel is in place. Such a deposition would be taken to preserve the testimony of ill or dying witnesses. If a claimant is to take the deposition, it can take place at any time after the

statement of claim and Uniform Submission Agreement are filed with NASD and are served upon all other parties either by NASD or by the party taking the deposition. If a respondent is to take the deposition, it can take place at any time after the Answer and Uniform Submission Agreement are filed with NASD and are served upon all other parties.

To limit abuse, we suggest that the deposition can be taken only of the party taking the deposition or a person identified with the party taking the deposition (e.g., a spouse, child, parent, or person associated with a member). Thus, parties may not depose adversaries or those identified with their adversaries without prior arbitrator approval.

Such depositions would be taken following adequate notice to all other parties of the time, date, and place of the deposition. All parties would have an opportunity to cross examine. Such depositions would be admissible in evidence at the discretion of the arbitrators.

Rule 12511. Discovery Sanctions

We agree with this rule, but it does not go far enough. Proposed Rules 12506 and 12507 provide three possible alternatives in response to a document request. Proposed Rule 12511 addresses only two of them. We recommend that Proposed Rule 12511(a) include provisions concerning the third alternative. Thus the rule would read, for example:

> Failure to cooperate in the exchange of documents and information as required under the Code may result in sanctions. The panel may issue sanctions against any party in accordance with Rule 12211(a) for:
>
> - Failing to comply with the discovery provisions of the Code, unless the panel determines that there is substantial justification for the failure to comply;
>
> - **Frivolously invoking provisions of Rules 12506(b) and 12507(a) that permit the delay in the production of documents if the documents are identified, a reason is given for the delay, and an alternative production date is provided;**
>
> - **Setting an unreasonably long deadline or failing to meet a deadline set pursuant to Rules 12506(b) or 12507(a); or**

- Frivolously objecting to the production of requested documents or information.

(new language in bold and underlined).

Without these additional phrases or something similar, parties will be in full compliance of the rules by invoking the "delay provisions" of the new code, whether or not they invoke these provisions in good faith and whether or not they meet their self-imposed deadlines. As currently drafted, this rule implies that a bad-faith invocation of the "delay provisions" or a failure to meet a deadline cannot be sanctioned.

Rule 12512. Subpoenas

We question the intent of this rule and find its ambiguity inconsistent with the clarity of most of the other proposed rules. Indeed the current rule is clearer, albeit no less an invitation to mischief.

Neither the current rule nor the proposed rule should permit attorneys to issue subpoenas. The rule should state clearly and unambiguously that arbitrators and only arbitrators may issue subpoenas.[5]

The Rule Should State That Only Arbitrators May Issue Subpoenas

Under the current state of the law, only arbitrators may issue subpoenas when the Federal Arbitration Act ("FAA") applies to an arbitration. The FAA applies to virtually all securities arbitrations. Therefore, only arbitrators may issue subpoenas in virtually all securities arbitrations.

Nevertheless, attorneys for parties – especially parties in the securities industry – issue phoney subpoenas seeking private financial information (sometimes even directed to claimants' employers) about customers from, among others, financial institutions that are not ordinarily

[5] We are familiar with the Commission's request for comment regarding the proposed rule and the Uniform Code's subpoena rule. The Commission asks "Where Section 23 of the Uniform Code and Proposed NASD Rule 12512 differ, which alternative is preferable? Why?" This request for comment begs the question. The issue is whether attorneys should be permitted to issue subpoenas. If they are not, the concern purportedly satisfied by the Uniform Code (and by a recent request by the NASD to amend its current rule 10322) disappears. (Proper practice requires that all communication with arbitrators be on notice to all parties. Any request to arbitrators to sign a subpoena will automatically require notice and an opportunity to oppose the subpoena, which is the NASD's current practice.)

permitted to disclose such information. When served with these phoney subpoenas, these institutions disclose the information in violation of federal law.

As we demonstrate below, only arbitrators are permitted to issue subpoenas and any suggestion by the NASD rule that others may, is an invitation for mischief.

1. Only arbitrators may issue subpoenas in securities arbitrations

Every single securities arbitration filed with the NASD is governed by the FAA. *See The Citizens Bank v. Alafabco, Inc., 123 S. Ct. 2037 (2003)*.

The FAA permits only arbitrators to issue subpoenas. Section 7 of the FAA provides in relevant part

> The arbitrators selected . . . or a majority of them, may summon in writing any person to attend before them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. . . . **Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them,** . . . .

9 U.S.C.A. § 7 (emphasis added).

Thus, only arbitrators may issue subpoenas in arbitrations governed by the FAA.

Federal appeals courts that have addressed the issue agree. The United States Court of Appeals for the Second Circuit has expressly stated that Section 7 of the FAA "explicitly confers authority only upon arbitrators; by necessary implication, the parties to an arbitration may not employ this provision to subpoena documents or witnesses." *National Broadcasting Co. v. Bear Stearns & Co.*, 165 F.3d 184, 187 (2d Cir. 1999) (citing cases); *Burton v. Bush*, 614 F.2d 389, 390 (4th Cir. 1980) ("While an arbitration panel may subpoena documents or witnesses, the litigating parties have no comparable privilege.") (citing cases); *see also St. Mary's Med. Ctr. of Evansville, Inc. v. Disco Aluminum Prods. Co.*, 969 F.2d 585, 591 (7th Cir. 1992) (citing *Burton* with approval).

Accordingly, only the arbitrators can issue subpoenas where the Federal Arbitration Act applies.

Indeed, in the unlikely event that state arbitration law applies, only arbitrators would be authorized to issue subpoenas, because nearly every state arbitration law authorizes only arbitrators to issue subpoenas.

While we are not experts on the subject, we are aware of only two state arbitration laws that allow attorneys to issue arbitration subpoenas: Delaware's (*See* Del. Code Ann. tit. 10, § 5708 ("An arbitrator and any attorney of record in any arbitration proceeding shall have the power to issue subpoenas in his or her own name.")) and New York's. *See*, N.Y. Civ. Prac. Law § 7505 (McKinney 1998) ("An arbitrator and any attorney of record in the arbitration proceeding has the power to issue subpoenas. An arbitrator has the power to administer oaths.").

We do not know whether the Delaware law applies to arbitration discovery. We do know the New York law does not apply to arbitration discovery[6]

Notwithstanding the existence of these statutes, when state law conflicts with the FAA, the FAA controls. *See Volt Information Sciences, Inc. v. Board of Trustees of Leland*, 489 U.S. 468, 477 (1989) (where state law "would undermine the goals and policies" of the FAA, the FAA rules apply).

The Courts of New York agree. *See Salvano v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 85 N.Y.2d 173; 647 N.E.2d 1298; 623 N.Y.S.2d 790 (1995) (citing *Volt*) (Where the FAA applies "[i]f the parties' arbitration agreement contains a choice of law clause providing that the law of a particular State will govern their arbitration, the parties' choice will be given effect if to do so will not conflict with the policies underlying the FAA; otherwise, the FAA applies.")

Thus, under almost every possible circumstance, the FAA will apply to NASD securities arbitrations and only arbitrators may issue subpoenas.

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[6] *See, e.g., DeSapio v. Kohlmeyer*, 35 N.Y.2d 402, 406; 321 N.E.2d 770; 362 N.Y.S.2d 843 (1974) ("Under the CPLR, arbiters do not have the power to direct the parties to engage in disclosure proceedings. While a court may order disclosure 'to aid in arbitration' pursuant to *CPLR 3102* (subd. [c]), it is a measure of the different place occupied by discovery in arbitration that courts will not order disclosure 'except under extraordinary circumstances.'"); *Integrity Ins. Co. v. American Centennial Ins. Co.*. 885 F. Supp. 69, 71 n.3 (S.D.N.Y. 1995) ("The arbitrators are sitting in New York, which grants arbitrators authority to issue subpoenas. See N.Y. Civ. Prac. L. & R. ("CPLR") §§ 2302(a), 7505 (McKinney 1991). Professor Siegel notes that this authority extends only to the hearing before the arbitrators, "and not, by implication, for the steps preparatory to the hearing," i.e. discovery. David D. Siegel, Practice Commentaries, CPLR 2302:1. However, in an action brought in federal court, the provisions of the FAA prevail over any inconsistent state arbitration statutes. *Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 18 L. Ed. 2d 1270, 87 S. Ct. 1801 (1967).*"); Alexander, Practice Commentaries to Section 7505 (McKinney 1998) ("The subpoena power conferred by CPLR 7505 is limited to the procuring of evidence for the hearing or trial of the dispute. Depositions or other forms of pretrial discovery are not ordinarily contemplated in arbitration proceedings. CPLR 3102(c) authorizes discovery in aid of arbitration only by court order.")

2. Allowing anyone other than the arbitrators to issue subpoenas is an invitation to engage in the same mischief in which some parties currently engage

Retaining the current rule or the proposed rule invites mischief. Parties – especially (but not exclusively) those representing the securities industry – have applied the NASD rule as though it were a license to issue subpoenas under all circumstances. In fact, the rule only permits subpoenas to be issued if the law allows it. As discussed above, the law does not allow it. This has not deterred parties' attorneys from issuing subpoenas and arguing that if they were doing anything wrong, the arbitrators should stop them. Often, the subpoenas are issued long before the arbitrators have been appointed and the recipients of the subpoenas have responded.

As we demonstrate below, this harms the arbitration process in at least three ways.

a. The proposed rule limits the authority of arbitrators to control discovery

First, the FAA authorizes the arbitrators, in effect, to control discovery. If the arbitrators decide whether a subpoena should be issued, the arbitrators also decide the scope of the subpoena. If the lawyer issues the subpoena, the arbitrators' power to control discovery is limited thus undermining one of the goals and policies of the FAA.

b. The proposed rule will continue the illegal invasion of investors' privacy

Second, when a lawyer issues an unauthorized subpoena he violates the law. We have already discussed the violation of the FAA, but at least as important he violates laws designed to protect privacy. For example, an unauthorized subpoena issued to many financial institutions will violate the Gramm-Leach-Bliley Act. *See* 15 U.S.C. §§ 6801 *et seq.* Moreover, if the financial institution provides private information in response, it is equally in violation.

15 U.S.C. § 6821(a) provides in relevant part:

> It shall be a violation of this subtitle for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person
>
> > (1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution; . . . [or]
> >
> > (3) by providing any document to an officer, employee, or agent of a financial institution knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

15 U.S.C. § 6802(a) provides "Except as otherwise provided in this subtitle, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any

nonpublic personal information, unless such financial institution provides or has provided the customer a notice that complies with section 503." [15 U.S.C. § 6803]

Thus, when a lawyer issues a phony subpoena and represents it to be a legitimate subpoena, both he and the financial institution may be liable under these sections. Moreover, under section 6823, one who violates 15 U.S.C. § 6821 is susceptible of criminal penalties.

NASD arbitration participants, as any other customers of financial institutions, are entitled to the safekeeping of their nonpublic personal information. Merely by filing an arbitration, they do not waive the rights to privacy Congress provided them. Yet, despite the abundance of these phony subpoenas,[7] we are unaware of a single instance where a regulator required to enforce the Gramm-Leach-Bliley Act – including the Federal Trade Commission and the Securities and Exchange Commission – sanctioned those who either issued phoney subpoenas or disclosed private information in response to phoney subpoenas.

This apparent indifference to enforcement has not gone unnoticed among those who currently issue phoney subpoenas and who, under the proposed rule, will continue to issue phoney subpoenas.

Even if Gramm-Leach-Bliley did not exist, the NASD has an obligation to enforce its (NASD's) rules. The current arbitration rule only permits lawyers to issue subpoenas "as provided by law." As discussed above, almost every single subpoena issued by a lawyer has been and undoubtedly will continue to be in violation of the law. Thus, issuing these phoney subpoenas violates both the law and the NASD arbitration rules.

The NASD can sanction a violation of its arbitration rules. (*See, e.g.,* NASD Notice to Members 03-70 ("In addition, NASD Dispute Resolution staff has recently initiated a practice of bringing all alleged discovery abuses to the attention of the Director of Arbitration and the President of NASD Dispute Resolution. These cases will be carefully reviewed and, when appropriate, NASD Dispute Resolution will refer such cases to NASD Regulatory Policy and Oversight for disciplinary review."))

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[7] Attached are over thirty subpoenas issued and signed by attorneys in NASD arbitrations. In this particular sample, the attorneys practice in California, Florida, New York, and Texas. The California attorneys issued subpoenas to non-parties in California, Colorado, Massachusetts, Minnesota,, New Jersey, and Texas. The Florida attorneys issued subpoenas to non-parties in California, Colorado, Illinois, Massachusetts, Missouri, New Jersey, New York, Pennsylvania, and Rhode Island. The New York attorney issued a subpoena to a non-party in Connecticut. The Texas attorneys issued subpoenas to non-parties in Iowa, Missouri, New York, and Texas. Most of the non-parties appear to be financial institutions or employers. While we have not included most certificates of service to save space, copies of most of the subpoenas appear to have been sent to NASD's arbitration program

Yet despite NASD's recognition that it must protect the investor from discovery abuse, despite the fact that counsel for NASD members and their associated persons have issued phoney subpoenas for many years, and despite the fact that NASD receives copies of many of these attorney-signed, phoney subpoenas, we are unaware of a single instance where the NASD sanctioned anyone for issuing a phoney subpoena in violation of its current rules.

Given the likelihood that few, if any, arbitrations will be filed with the NASD where lawyers may legitimately issue subpoenas and given the likelihood that an NASD rule that continues to permit lawyers to issue subpoenas (even under limited circumstances) will be abused, this rule should be revised to permit only arbitrators to issue subpoenas.[8]

c. The proposed rule places parties who appear *pro se* at a disadvantage

Third, under the current rule and the apparent intent of the proposed rule, a party appearing *pro se* does not have the same access to the subpoena process as a party with counsel. A party with counsel can issue the subpoena before the arbitrators are appointed and get the documents he wants without the intervention of the arbitrators. A party appearing *pro se* must both wait for the arbitrators to be empaneled and hope that the arbitrators agree with him that the documents he wants subpoenaed are worthy of subpoena. Thus, permitting lawyers to issue subpoenas, even when it is legal to issue them, places the *pro se* party at a disadvantage. Even the appearance of such a disadvantage is inappropriate in a forum that is identified with the securities industry.

For the foregoing reasons, we submit the proposed rule should be changed to permit only arbitrators to issue subpoenas.

Rule 12514. Exchange of Documents and Witness Lists Before Hearing

1. The use of the word "control" in Proposed Rule 12514(a)

Our comments regarding the word "control" made with respect to Proposed Rule 12506 apply here.

2. The use of the term "impeachment purposes based on developments during the hearing" in Proposed Rule 12514(c)

Precisely what documents need to be produced pursuant to the proposed rule is ambiguous and creates unnecessary burdens on the parties. Under the present rule, parties know that whatever documents they plan to have admitted in evidence in their case-in chief must be produced under the twenty-day exchange rule. They also know that if they plan to use the documents in cross

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[8] We point out in passing that in addition to the Federal Arbitration Act, the Uniform Arbitration Act and the recently completed Revised Uniform Arbitration Act permit only arbitrators to issue subpoenas.

examination or rebuttal the documents need not be produced. (*See* Rule 10321.) The concepts of "cross examination" and "rebuttal" are clear. Under the present rule, parties can plan.

Under the proposed rule, parties do not have to produce documents if they are to be used in rebuttal, which is the same as in the current rule. But the proposed rule replaces the term "cross examination" with "impeachment purposes based on developments during the hearing." This change creates an ambiguity that will create more uncertainty in the preparation process for the parties and will lead to more arguments at the hearings.

Not all cross examination is impeachment. In the hands of a skillful examiner much of cross examination is merely the confirmation of certain information that may not have been elicited clearly in direct examination. Moreover, because, as a practical matter, we conduct no depositions in arbitrations, examiners do not know the extent of a witness's knowledge or what his testimony will be. As a result, the arbitrators rightly grant cross examiners more leeway in the scope of cross examination than would normally be permitted under the rules of evidence (which, of course, do not apply in these arbitrations). The proposed rule imposes a standard in arbitration that is more suited to litigation.

The proposed rule asks parties to predict whether an adverse witness will testify about a subject, whether the adverse witness will testify falsely, and whether the arbitrators will even remember the testimony, which may have occurred months earlier and cannot be easily confirmed without the benefit of a transcript. This will only complicate the arbitration process, not facilitate it.[9]

In addition, the proposed rule will slow down hearings and make the arbitrator's role more difficult. Under the proposed rule, cross examination will be studded with objections and claims that a document is not presented for "impeachment." Cross examination suffers from enough objections. Adding a rule with this kind of ambiguity creates a safe harbor for those who prefer to interfere with a witness's testimony any way they can.

The current rule's bright lines – rebuttal or cross examination – are easily understood, easily planned for, and easily administered by the arbitrators. Replacing "cross examination" with "impeachment purposes based on developments during the hearing" is not an improvement. It

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[9] Some parties call adverse parties or persons associated with adverse parties as witnesses in their case-in-chief. Thus, technically, the testimony is direct testimony and not cross examination. It may be that the NASD has included the term "impeachment" to cover such situations. If that is the case, then the rule should be changed to state "cross examination, rebuttal, and any examination of an adverse party or a witness identified with an adverse party." *Cf.* Fed. R. Evid. 611(c) ("When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.")

creates ambiguity where clarity currently exists, it increases the burdens of preparation on the parties, and it makes its application by the arbitrators more difficult.

We agree with the NASD's comment that the proposed rule strengthens the consequences of noncompliance by providing a "good cause" requirement. But by using the term "impeachment purposes based on developments during the hearing" instead of "cross examination" the proposed rule creates an ambiguity that makes the rule more difficult to comply with and more difficult to administer.

Current rule 10321(c) provides, in part, "This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross examination or rebuttal." We recommend that this language replace the ambiguous language of Proposed Rule 12514(c): "Good cause includes the use of documents not previously produced or witnesses not previously identified for cross examination or rebuttal."

3. The meaning of the word "rebuttal" in Proposed Rule 12514(c)

We agree with the rule with respect to rebuttal, but we add one point regarding the word's meaning. Respondents sometimes claim at a hearing that their case-in-chief, (that is, their defense) is "rebuttal," and they, therefore, can use any documents or witnesses they choose during this "rebuttal" whether or not disclosed at the twenty-day exchange.

This is, of course, nonsense.

To prevent any false impression that some respondent may try to create, the NASD currently includes the following statement in its letter to parties advising them of the hearing dates. "Rule 10321(c) [the rule regarding the twenty-day exchange] does not require service of the copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal. **Documents and list of witnesses presented in defense of a claim are not considered rebuttal and, therefore, must be exchanged by the parties."** (emphasis added)

The proposed rule should include a similar statement, so that no question exists about the issue.

This is a clear, succinct interpretation of the rule. The NASD in its comment says that the proposed rule is no different from the current rule. In fact it is, or can easily be interpreted to be different. Therefore, we recommend that the clarifying statement be added to the rule.

ADDITIONAL COMMENTS REGARDING DISCOVERY

The Discovery Guide provides:

> If a party responds that no responsive information or documents exist, the customer or the appropriate person in the brokerage firm who has personal knowledge (i.e., the person who has conducted a physical search), upon the request of the requesting party, must: 1) state in writing that he/she conducted a good faith search for the requested information or documents; 2) describe the extent of the search; and 3) state that, based on the search, no such information or documents exist.

This kind of affirmation is inadequate. It is another invitation for mischief. A party may produce one page in response to a document request, have hundreds of other responsive documents, not produce them, and not have to affirm anything about them. At the least, the affirming party should affirm

a. he has personal knowledge of the search conducted for documents (i.e., he is the person who conducted the search;

b. he conducted a good-faith search for documents responsive to the following requests: [enumerate the request numbers];

c. the good-faith search he conducted included a search of [describe the extent of the search];

d. based upon the good-faith search, all responsive documents were turned over to the requesting party (except those protected by a privilege and expressly identified as withheld because of an identified privilege).

Rule12607. Order of Presentation of Evidence and Arguments

This is a new rule that codifies standard practice. However the rule is ambiguous in two respects: first, it does not mention rebuttal testimony. Second, despite its title, it says nothing about opening statements or closing arguments.

1. The rule should expressly discuss rebuttal testimony

In its current form, the rule gives the impression that rebuttal testimony is not part of the typical procedure. Yet, Rule 10321(c) of the current code and its analog in the proposed code (Rule 12514(c)) correctly assume rebuttal by providing that documents to be used in rebuttal need not be exchanged pursuant to the twenty-day exchange requirement.

In the current code, it is unnecessary to mention rebuttal in any rule other than Rule 10321(c), because no other rule in the code addresses the order of the presentation of evidence. But once the proposed code raises the issue, the entire order of presentation of evidence should be provided. Otherwise, unnecessary debate will ensue about whether rebuttal is allowed, and in some cases investors, who constitute the vast majority of claimants, will lose the rights to rebuttal that the code envisions.

2. The rule should expressly discuss opening statements and closing arguments

Given its current title, the rule gives the impression that it governs opening statements and closing arguments. Someone may infer from this that in closing arguments claimant goes first and respondent second. But it is common practice that the party with the burden of proof always has the option of having the last word.

The current practice at the NASD is provided by IM-10317, which is included among the current rules. It says,

> In response to recent questions concerning the order of closing argument in arbitration proceedings conducted under the auspices of the National Association of Securities Dealers, Inc., it is the practice in these proceedings to allow claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedures may, however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present their respective cases.

We recommend that to prevent any ambiguity about the intent of this rule, that the rule discuss opening statements (that is, that claimants go first and respondents second) and closing arguments. With respect to closing arguments, the rule should track the intent and the language of IM-10317.

12801. Default Proceedings

The rule should be changed to permit default proceedings where a party has failed to file an Answer or a Uniform Submission Agreement and not just an Answer. As discussed in our comments of Proposed Rule 12308, a party who fails to file a Uniform Submission Agreement would not have its Answer presented to the arbitrators and the arbitration would proceed as though the party required to Answer has not answered. Our proposal includes barring such a party to participate in the arbitration in any way including motion practice. Moreover, such a party would not be permitted to attend the hearing. The same would apply to a party who fails to file an Answer but who has filed a Uniform Submission Agreement.

The rule should be expanded to include parties who remain members in good standing with the NASD or their associated persons. No justification exists to expedite proceedings against parties who are no longer members of the NASD who refuse to participate in the proceedings and not

against members of the NASD who refuse to participate in the proceedings. If the rule is to have any meaning it should be available for use against any recalcitrant party. Members of the NASD should not be given any special privileges merely because they remain dues-paying members of the entity that funds the arbitration forum.

Moreover, if the rule is to have any meaning, it should limit the time a party must file its Answer and Uniform Submission Agreement. To permit a party "to play chicken" with its opponent and refuse to file an Answer and Uniform Submission Agreement until it sees that his opponent has initiated default proceedings leads only to gamesmanship.

A claimant is entitled to a reasonable application of the rules. If the rules provide that a party will file an Answer and a Uniform Submission Agreement within forty-five days, the claimant is entitled to have the Answer and Submission Agreement within that time. If the respondent does not file both the Answer and Uniform Submission Agreement within a predetermined time, for example, ninety days, then the claimant should be entitled to a presumption that his opponent chooses not to participate in the arbitration, and unless the respondent can provide "substantial justification" for not filing both the Answer and the Uniform Submission Agreement within the ninety days it cannot participate in any way in the arbitration process including ending any default proceeding brought by the claimant. After the ninety-day deadline, the claimant would be able to opt for the default proceedings without any interference by the respondent.

As for the default process itself, the determination of the arbitrators should be dispositive only in the movant's favor just as a summary judgment ruling may be. If the movant does not get everything he wants with respect to either liability or damages, he should have the opportunity to present his case in an evidentiary hearing with respect to those limited issues not favorably ruled upon.

The statement of claim alone may not be sufficient to prove the case. Proposed Rule 12302(a) provides that the Statement of Claim merely specify "the relevant facts and remedies requested." Nothing more. It does not require a detailed presentation of the facts. It does not require evidence demonstrating the alleged facts' veracity. Moreover some facts are susceptible only of oral proof. Thus, if a claimant fully complies with the rules regarding the content of the Statement of Claim, he mail fall short of the requirements set for the default proceedings. For the default proceeding rule to be effective, it should be a rule the parties are willing to employ without fear that an earlier compliance with the NASD rules with respect to the contents of the Statement of Claim will prejudice them in a default proceeding.

We also suggest that similar to a summary judgment motion, a party be permitted to present to the arbitrator only a portion of the Statement of Claim for default proceedings. For example, a party may think that the Statement of Claim sufficiently addresses issues of liability, but may not have quantified the exact amount of damages sought. In such a case, the party should be permitted to bifurcate his claim and seek a default on liability alone and present his case for damages at a hearing where, for example, an expert witness may be presented.

If this rule is to have any bite, it should be made more user friendly.

I again thank you for the opportunity to comment. If you have any questions, please contact me.

Very truly yours,

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Claimant,

vs.

NASD-DR *Arbitration* No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.
_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Bank One, N.A.
One Bank One Plaza
Chicago, Illinois 60670

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by *mailing legible copies of the items* to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

CERTIFICATE OF SERVICE

I certify that a true copy hereof was served on November 22, 2004, by U.S. mail to:

Alan C. Friedberg, Esq.
PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as
Trustee for the E. Richard Howsam Jr.
Irrevocable Life Insurance Trust dated
May 14, 1982,

Claimant,

vs.

NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and
ROBERT P. HOWARD,

Respondents.

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Buchanan, Thomas and Johnson
Suite A
12499 West Colfax
Lakewood, Colorado 80215

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
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10th Floor
1875 Lawrence Street
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Patrick Walsh
NASD REGULATION, INC.
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10 S. LaSalle Street
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Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

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vs.

NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.
_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Fidelity Funds
82 Devonshire Street
Boston, Massachusetts 02109

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

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PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

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vs.

NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.

_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Franklin Funds
c/o Franklin Resources
One Franklin Parkway
San Mateo, California 94403

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

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& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

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Jon A. Jacobson

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NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.
_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
CGM Funds
P. O. Box 8511
Boston, Massachusetts 02266

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

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777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
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1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

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DEAN WITTER REYNOLDS, INC. and
ROBERT P. HOWARD,

Respondents.
_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Charles Schwab
101 Montgomery Street
San Francisco, CA 94104

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

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West Palm Beach, Florida 33401
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Fax: (561) 655-6222

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PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Claimant,

vs.

NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.

_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Franklin Funds
c/o Franklin Templeton Investor Services, LLC
Legal Transfer Special Services
Building 970, Second Floor
One Franklin Parkway
San Mateo, California 94403

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 30, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 29th day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

CERTIFICATE OF SERVICE

I certify that a true copy hereof was served on November 29, 2004, by U.S. mail to:

Alan C. Friedberg, Esq.
PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Claimant,

vs.

NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.

_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Ickovic & Associates, P.C.
#220
6025 South Quebec
Englewood, Colorado 80111

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

CERTIFICATE OF SERVICE

I certify that a true copy hereof was served on November 22, 2004, by U.S. mail to:

Alan C. Friedberg, Esq.
PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Claimant,

vs. NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.
_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Janus Funds
c/o Janus Distributors LLC
P. O. Box 173401
Denver, Colorado 80217

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

CERTIFICATE OF SERVICE

I certify that a true copy hereof was served on November 22, 2004, by U.S. mail to:

Alan C. Friedberg, Esq.
PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Claimant,

vs.

NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.
_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Kaufmann Funds
5800 Corporate Drive
Pittsburgh, Pennsylvania 15237

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

CERTIFICATE OF SERVICE

I certify that a true copy hereof was served on November 22, 2004, by U.S. mail to:

Alan C. Friedberg, Esq.
PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Claimant,

vs.

NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.

/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Thomas W. Hanson, CPA
Suite 105
770 Grant Street
Denver, Colorado 80203

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

CERTIFICATE OF SERVICE

I certify that a true copy hereof was served on November 22, 2004, by U.S. mail to:

Alan C. Friedberg, Esq.
PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Claimant,

vs.

NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.
_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Vista Funds
c/o American Century Companies
Suite 1500
4500 Main Street
Kansas City, Missouri 64111

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

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Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

CERTIFICATE OF SERVICE

I certify that a true copy hereof was served on November 22, 2004, by U.S. mail to:

Alan C. Friedberg, Esq.
PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Claimant,

vs.

NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Vista Funds
Putnam Investments
P. O. Box 41203
Providence, Rhode Island 02940-1203

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

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Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

CERTIFICATE OF SERVICE

I certify that a true copy hereof was served on November 22, 2004, by U.S. mail to:

Alan C. Friedberg, Esq.
PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Claimant,

vs. NASD-DR Arbitration No. 97-01394

DEAN WITTER REYNOLDS, INC. and ROBERT P. HOWARD,

Respondents.
_____/

SUBPOENA FOR DOCUMENTS

TO: Records Custodian
Alliance Funds
c/o Alliance Capital
1345 Avenue of the Americas
New York, New York 10105

YOU ARE COMMANDED to appear at the offices of Greenberg Traurig, P.A., Suite 300 East, 777 South Flagler Drive, West Palm Beach, Florida 33401, on **December 10, 2004**, and to have with you at that time and place the items listed on the attached Schedule A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **YOU MAY COMPLY** with this Subpoena by mailing legible copies of the items to be produced to the attorney whose name appears on this Subpoena on or before the scheduled date of production.

Dated this 22nd day of November, 2004.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Fax: (561) 655-6222

By: _____
Joseph C. Coates III, FBN 772860
Jon A. Jacobson, FBN 155748

CERTIFICATE OF SERVICE

I certify that a true copy hereof was served on November 22, 2004, by U.S. mail to:

Alan C. Friedberg, Esq.
PENDLETON FRIEDBERG WILSON
& HENNESSEY P.C.
10th Floor
1875 Lawrence Street
Denver, CO 80202-1898

Patrick Walsh
NASD REGULATION, INC.
#1100
10 S. LaSalle Street
Chicago, IL 60603-1002

_____
Jon A. Jacobson

NASD DISPUTE RESOLUTION, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN:

G. DEWITT BOICE,
G. DEWITT BOICE TRUSTEE and
LORRAINE R. BOICE,

Claimants,

CASE NO. 02-07882

v.

MICHAEL B. WEINBERG and MERRILL LYNCH,
PIERCE, FENNER & SMITH INCORPORATED,

Respondents.

_____/

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF FLORIDA

TO: PC Financial Network
One Pershing Plaza
Jersey City, New Jersey 07399

GREETINGS:

WE COMMAND YOU, that all business and excuses being laid aside, that under the United States Federal Arbitration Act, Florida Arbitration Code and NASD Regulation Inc's Code of Arbitration Procedure, that you produce the following documents now in your possession or custody to Neil S. Baritz, Esq., Baritz & Colman, LLP, 150 East Palmetto Park Road, Suite 750, Boca Raton, Florida 33432, on or before June 17, by mail:

SEE ATTACHED EXHIBIT "A"

BARITZ & COLMAN, LLP
150 E. Palmetto Park Road, St. 750
Boca Raton, Florida 33432
(561) 750-0910
(561) 750-5045 (facsimile)

DATED: MAY 27, 2003

By: _____
Neil S. Baritz, Esq.

NASD DISPUTE RESOLUTION, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN:

G. DEWITT BOICE,
G. DEWITT BOICE TRUSTEE and
LORRAINE R. BOICE,

Claimants,

CASE NO. 02-07882

v.

MICHAEL B. WEINBERG and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Respondents.

_____/

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF FLORIDA

TO: Van Kampen Funds
P.O. Box 419319
Kansas City, MO 64141-6319

GREETINGS:

WE COMMAND YOU, that all business and excuses being laid aside, that under the United States Federal Arbitration Act, Florida Arbitration Code and NASD Regulation Inc's Code of Arbitration Procedure, that you produce the following documents now in your possession or custody to Neil S. Baritz, Esq., Baritz & Colman, LLP, 150 East Palmetto Park Road, Suite 750, Boca Raton, Florida 33432, on or before June 17, by mail:

SEE ATTACHED EXHIBIT "A"

BARITZ & COLMAN, LLP
150 E. Palmetto Park Road, St. 750
Boca Raton, Florida 33432
(561) 750-0910
(561) 750-5045 (facsimile)

DATED: MAY 27, 2003

By: _____
Neil S. Baritz, Esq.

THE BALLARD LAW FIRM
Litigation and Arbitration Attorneys

3700 Buffalo Speedway, Suite 250
Houston, Texas 77098

Telephone: (713) 403-6400
Facsimile: (713) 403-6410
Web: ballardlawfirm.com

Craig H. Clendenin
Direct Dial: (713) 403-6402
Email: cclendenin@ballardlawfirm.com

Board Certified – Civil Trial Law
Texas Board of Legal Specialization

April 14, 2005

Via Facsimile* 212-969-2293 *and Certified Mail, RRR
Mr. Collin Burke
Alliance Capital
1345 Avenue of the Americas
16th Floor
New York, NY 10105

Re: NASD No. 04-07705; Harold Cash, Lee Franklin, Carl Jackson and Avelino Troncosco v. Merrill Lynch and John Kloss

Dear Mr. Burke:

My firm represents the Respondents in the above-referenced arbitration proceeding.

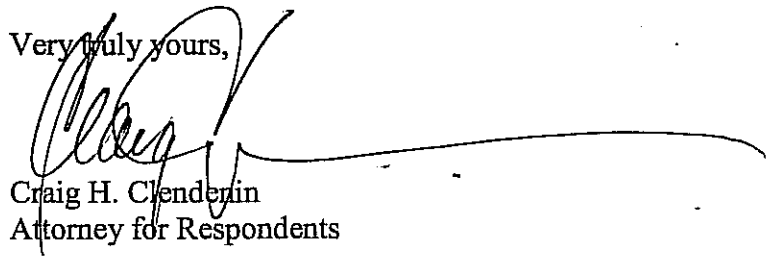
We have prepared and served a subpoena requesting that Alliance Capital produce certain documents in connection with this matter. A listing of the documents is attached to the subpoena as Exhibit A.

Although the subpoena provides for a formal production of the documents by you, we are prepared to handle the matter more informally for your convenience and in order to save you time. Specifically, an appearance will not be required if, after collecting the documents, an Alliance Capital representative will execute the enclosed affidavit authenticating the documents and return it to me with the documents before the date and time specified in the subpoena.

We will reimburse you for the cost of copying the documents. Although I do not expect the documents to be voluminous, please call me at (713) 403-6402 before you arrange to have a large number of documents copied. I would consider more than 300 pages to be "voluminous."

Thank you for your time and cooperation.

Very truly yours,



Craig H. Clendenin
Attorney for Respondents

Enclosures

cc:

Ronald Thrash
Christopher Tovar
Shepherd Smith & Edwards
1314 Texas Avenue, 21st Floor
Houston, TX 77002

Elisa Guerrero
NASD Dispute Resolution
10 South LaSalle Street, Suite 1110
Chicago, IL 60603

SUBPOENA

THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.	
In the Matter of the Arbitration Between: Harold Cash, Lee Franklin, Carl Jackson and Avelino Troncosco	NASD MATTER NO. 04-07705
Claimant vs.	
Merrill Lynch, Pierce, Fenner & Smith, Incorporated and John Kloss Respondents	SUBPOENA FOR __ PERSON _☐ _ DOCUMENT(S) or OBJECT(S)

TO:
Mr. Collin Burke
Alliance Capital
1345 Avenue of the Americas
16th Floor
New York, NY 10105

YOU ARE HEREBY COMMANDED to appear in the above matter pursuant to the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, Section 10322 and the Federal Rules of Civil Procedure, 30(b)(5), 34 and 45, at the place, date, and time stated:

THE BALLARD LAW FIRM **3700 BUFFALO SPEEDWAY** **SUITE 250** **HOUSTON, TEXAS 77098** **ATTN: CRAIG H. CLENDENIN**	DATE AND TIME: **10:00 a.m., May 2, 2005**

YOU ARE ALSO COMMANDED to bring with you the following document(s):

SEE EXHIBIT "A" ATTACHED FOR DOCUMENTS REQUESTED.

Issuing Officer's Signature and Title: ATTORNEY FOR RESPONDENT MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED AND JOHN KLOSS	DATE April 14, 2005
This subpoena is issued upon application of the Respondents.	ATTORNEY NAMES AND ADDRESS **CRAIG H. CLENDENIN** **THE BALLARD LAW FIRM** **3700 BUFFALO SPEEDWAY** **SUITE 250** **HOUSTON, TEXAS 77098**

SUBPOENA

THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.	
In the Matter of the Arbitration Between: *Harold Cash, Lee Franklin, Carl Jackson and Avelino Troncosco* Claimant, vs. Merrill Lynch, Pierce, Fenner & Smith, Inc, and John Kloss Respondents.	Matter No. 04-07705 SUBPOENA FOR PERSON ☐ DOCUMENT(S) or OBJECT(S)

TO:
Custodian of the Records
c/o Legal Department
BP Amoco Corporation
501 Westlake Park Blvd.
Houston, Texas 77079

YOU ARE HEREBY COMMANDED to appear in the above matter pursuant to of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, Rule 10322 , at the place, date, and time stated:

THE BALLARD LAW FIRM **3700 BUFFALO SPEEDWAY** **SUITE 250** **HOUSTON, TEXAS 77098** **Attn: Craig H. Clendenin**	DATE AND TIME: **10:00 a.m., July 5, 2005**

YOU ARE ALSO COMMANDED to bring with you the following document(s):

SEE EXHIBIT "A" ATTACHED FOR DOCUMENTS REQUESTED.	
Issuing Officer's Signature and Title: ATTORNEY FOR RESPONDENTS named herein	DATE: June 21, 2005
This subpoena is issued upon application of the Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and John Kloss	ATTORNEY'S NAME AND ADDRESS **CRAIG H. CLENDENIN** **THE BALLARD LAW FIRM** **3700 BUFFALO SPEEDWAY** **SUITE 250** **HOUSTON, TEXAS 77098**

SUBPOENA

THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.	
In the Matter of the Arbitration Between: Harold Cash, Lee Franklin, Carl Jackson and Avelino Troncosco Claimant vs.	NASD MATTER NO. 04-07705
Merrill Lynch, Pierce, Fenner & Smith, Incorporated and John Kloss Respondents	SUBPOENA FOR __ PERSON _☐ _ DOCUMENT(S) or OBJECT(S)

TO:
CUNA Brokerage Services
2000 Heritage Way
Waverly, Iowa 50677

YOU ARE HEREBY COMMANDED to appear in the above matter pursuant to the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, Section 10322 and the Federal Rules of Civil Procedure, 30(b)(5), 34 and 45, at the place, date, and time stated:

THE BALLARD LAW FIRM **3700 BUFFALO SPEEDWAY** **SUITE 250** **HOUSTON, TEXAS 77098** **ATTN: CRAIG H. CLENDENIN**	DATE AND TIME: **10:00 a.m., May 23, 2005**

YOU ARE ALSO COMMANDED to bring with you the following document(s):

SEE EXHIBIT "A" ATTACHED FOR DOCUMENTS REQUESTED.	
Issuing Officer's Signature and Title: ATTORNEY FOR RESPONDENTS MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED AND JOHN KLOSS	DATE May 4, 2005
This subpoena is issued upon application of the Respondents.	ATTORNEY NAMES AND ADDRESS **CRAIG H. CLENDENIN** **THE BALLARD LAW FIRM** **3700 BUFFALO SPEEDWAY** **SUITE 250** **HOUSTON, TEXAS 77098**

SUBPOENA

THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.	
In the Matter of the Arbitration Between: Harold Cash, Lee Franklin, Carl Jackson and Avelino Troncosco Claimant vs. Merrill Lynch, Pierce, Fenner & Smith, Incorporated and John Kloss Respondents	NASD MATTER NO. 04-07705 SUBPOENA FOR __ PERSON __ DOCUMENT(S) or OBJECT(S)

TO:
Mr. Anthony Whitehead
Edward D. Jones & Co.
700 Maryville Center Drive
St. Louis, Missouri 63141

YOU ARE HEREBY COMMANDED to appear in the above matter pursuant to the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, Section 10322 and the Federal Rules of Civil Procedure, 30(b)(5), 34 and 45, at the place, date, and time stated:

THE BALLARD LAW FIRM **3700 BUFFALO SPEEDWAY** **SUITE 250** **HOUSTON, TEXAS 77098** **ATTN: CRAIG H. CLENDENIN**	DATE AND TIME: **Friday, February 4, 2005**

YOU ARE ALSO COMMANDED to bring with you the following document(s):

SEE EXHIBIT "A" ATTACHED FOR DOCUMENTS REQUESTED.	
Issuing Officer's Signature and Title: ATTORNEY FOR RESPONDENT MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED AND JOHN KLOSS	DATE January 14, 2005
This subpoena is issued upon application of the Respondent.	ATTORNEY NAMES AND ADDRESS **JACK D. BALLARD** **CRAIG H. CLENDENIN** **THE BALLARD LAW FIRM** **3700 BUFFALO SPEEDWAY** **SUITE 250** **HOUSTON, TEXAS 77098**

NASD DISPUTE RESOLUTION, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN:

G. DEWITT BOICE,
G. DEWITT BOICE TRUSTEE and
LORRAINE R. BOICE,

Claimants,

CASE NO. 02-07882

v.

MICHAEL B. WEINBERG and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Respondents.

_____/

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF FLORIDA

TO: Harris Direct
Harborside Financial Center
501 Plaza II
Jersey City, New Jersey 07311

GREETINGS:

WE COMMAND YOU, that all business and excuses being laid aside, that under the United States Federal Arbitration Act, Florida Arbitration Code and NASD Regulation Inc's Code of Arbitration Procedure, that you produce the following documents now in your possession or custody to Neil S. Baritz, Esq., Baritz & Colman, LLP, 150 East Palmetto Park Road, Suite 750, Boca Raton, Florida 33432, on or before June 17, by mail:

SEE ATTACHED EXHIBIT "A"

BARITZ & COLMAN, LLP
150 E. Palmetto Park Road, St. 750
Boca Raton, Florida 33432
(561) 750-0910
(561) 750-5045 (facsimile)

DATED: MAY 27, 2003

By:_____
Neil S. Baritz, Esq.

NASD DISPUTE RESOLUTION, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN:

G. DEWITT BOICE,
G. DEWITT BOICE TRUSTEE and
LORRAINE R. BOICE,

Claimants,

CASE NO. 02-07882

v.

MICHAEL B. WEINBERG and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Respondents.

_____/

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF FLORIDA

TO: OptionsXpress
39 South LaSalle Street, Suite 220
Chicago, Illinois 60603-1503

GREETINGS:

WE COMMAND YOU, that all business and excuses being laid aside, that under the United States Federal Arbitration Act, Florida Arbitration Code and NASD Regulation Inc's Code of Arbitration Procedure, that you produce the following documents now in your possession or custody to Neil S. Baritz, Esq., Baritz & Colman, LLP, 150 East Palmetto Park Road, Suite 750, Boca Raton, Florida 33432, on or before June 17, by mail:

SEE ATTACHED EXHIBIT "A"

BARITZ & COLMAN, LLP
150 E. Palmetto Park Road, St. 750
Boca Raton, Florida 33432
(561) 750-0910
(561) 750-5045 (facsimile)

DATED: MAY 27, 2003

By:_____
Neil S. Baritz, Esq.

Jonathan D. Robbins
CA State Bar No. 209951
MORGAN STANLEY DW INC.
Law Division
101 California Street, 2nd Floor
San Francisco, CA 94111
Telephone: (415) 693-6215
Facsimile: (415) 693-6250

Attorneys for Respondent
MORGAN STANLEY DW INC.
and TODD SCHMUCKER

BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between MARLENE WILKINS Claimant, vs. MORGAN STANLEY DEAN WITTER, INC. and TODD SCHMUCKER Respondents.	NASD Case No. 04-00477

(Records Only-No Appearance Necessary)

To:
Custodian of Records
Fidelity Investments
82 Devonshire Street
Mail Zone G12A
Boston, MA 02109

Pursuant to the provisions of section 10322 of the NASD Code of Arbitration, you are hereby directed to appear and to produce a copy of all documents referenced in Exhibit A attached hereto, with reference to Marlene and/or C. Grant Wilkins (Social Security Nos.), known addresses:

Personal appearance shall be waived if copies of the documents called for by this subpoena are delivered to: **Jonathan D. Robbins, Esq., Morgan Stanley Law Department, 101 California Street, 2nd Floor, San Francisco, California, 94111**, within 30 days of receipt of this subpoena. A reasonable charge for copying will be paid. Opposing counsel has requested that you simultaneously send a copy of all responsive documents to him. Those documents should be sent to: Alan Friedberg, Esq., Pendleton Friedberg Wilson & Hennessey P.C., 303 East Seventeenth Avenue, Suite 1000, Denver, CO 80203-1263. Costs for copies sent to opposing counsel are not to be billed to Morgan Stanley.

Respectfully submitted,
Morgan Stanley Law Division

Dated: June 3, 2004

By: _____
Jonathan D. Robbins
Attorney for Respondents
Morgan Stanley DW Inc. and
Todd Schmucker

BAKER BOTTS LLP

ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995
713.229.1234
FAX 713.229.1522

AUSTIN
BAKU
DALLAS
DUBAI
HONG KONG
HOUSTON
LONDON
MOSCOW
NEW YORK
RIYADH
WASHINGTON

June 10, 2005

004165.0248

David D. Sterling
(713) 229-1946
FAX (713) 229-7946
david.sterling@bakerbotts.com

Lyondell-Citgo Refining L.P.
ATTN: John A. Hollinshead
Vice President Human Resources
1221 McKinney
Houston, Texas 77010

By Certified Mail

Re: NASD No. 04-06861; *Leo Gomez, et al. v. Morgan Stanley DW Inc.*

Dear Mr. Hollinshead:

Enclosed please find a subpoena for records pertaining to the above-referenced matter. As stated in the subpoena, please produce the records to the undersigned within thirty (30) days from the date of service.

Thank you for your time and consideration in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

David D. Sterling

Enclosure
cc: Mr. Ronald H. Thrash(*by facsimile*)
Ms. Elizabeth Walsh (*by facsimile*)

Before the National Association of Securities Dealers

IN THE MATTER OF THE ARBITRATION BETWEEN	§	
LEO GOMEZ, JAVIER QUINONES, and EZRA THOMAS, Individually and on behalf of their IRAs,	§	
Claimants,	§	
vs.	§	N.A.S.D. ARBITRATION NO. 04-06861
MORGAN STANLEY DEAN WITTER, INC.,	§	
Respondent.	§	

SUBPOENA

TO: Legal Department/Custodian of Records, Lyondell-Citgo Refining L.P., 1221 McKinney, Houston, Texas 77010.

You are hereby commanded, pursuant to NASD Arbitration Rule 10322(a), to appear before a panel of NASD arbitrators at 10:00 a.m. on August 31, 2005, at the final hearing in this matter at a location to be announced and produce copies of the documents requested herein for use as evidence.

Please be advised that your appearance at the hearing will not be required if copies of the documents requested are delivered to counsel for Morgan Stanley DW Inc., respondent herein, on or before the expiration of 30 days from receipt of this subpoena. These documents should be produced in readable form and made available at the office of Respondents' attorney, David D. Sterling, Baker Botts, L.L.P., One Shell Plaza, 910 Louisiana Street, Houston, Texas.

The definitions and instructions set forth below will apply to this Subpoena unless the contents of the request clearly require a contrary construction. Unless otherwise specified,

Respectfully submitted,

BAKER BOTTS, L.L.P.

By: David D. Sterling

David D. Sterling
3000 One Shell Plaza
910 Louisiana
Houston, Texas 77002
(713) 229-1946
(713) 229-7946 (Fax)

Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished by facsimile this 10th day of June, 2005 to:

Ms. Elizabeth Walsh
NASD Office of Dispute Resolution
10 South LaSalle Street, Suite 1110
Chicago, Illinois 60603

Mr. Ronald H. Thrash
Shepherd, Smith & Edwards, L.L.P.
1314 Texas Avenue, 21st Floor
Houston, Texas 77002

David D. Sterling

Jonathan D. Robbins
CA State Bar No. 209951
MORGAN STANLEY DW INC.
Law Division
101 California Street, 2nd Floor
San Francisco, CA 94111
Telephone: (415) 693-6215
Facsimile: (415) 693-6250

Attorneys for Respondent
MORGAN STANLEY DW INC.
and TODD SCHMUCKER

BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between MARLENE WILKINS Claimant, vs. MORGAN STANLEY DEAN WITTER, INC. and TODD SCHMUCKER Respondents.	NASD Case No. 04-00477

(Records Only-No Appearance Necessary)

To:
Custodian of Records
AIM Investment Services, Inc.
11 Greenway Plaza, Suite 800
Houston, TX 77046

Pursuant to the provisions of section 10322 of the NASD Code of Arbitration, you are hereby directed to appear and to produce a copy of all documents referenced in Exhibit A attached hereto, with reference to Marlene and/or C. Grant Wilkins (Social Security Nos.), known addresses:

Personal appearance shall be waived if copies of the documents called for by this

subpoena are delivered to: **Jonathan D. Robbins, Esq., Morgan Stanley Law Department, 101 California Street, 2nd Floor, San Francisco, California, 94111**, within 30 days of receipt of this subpoena. A reasonable charge for copying will be paid. Opposing counsel has requested that you simultaneously send a copy of all responsive documents to him. Those documents should be sent to: Alan Friedberg, Esq., Pendleton Friedberg Wilson & Hennessey P.C., 303 East Seventeenth Avenue, Suite 1000, Denver, CO 80203-1263. Costs for copies sent to opposing counsel are not to be billed to Morgan Stanley.

Respectfully submitted,
Morgan Stanley Law Division

Dated: June 3, 2004

By: _____
Jonathan D. Robbins
Attorney for Respondents
Morgan Stanley DW Inc. and
Todd Schmucker

Jonathan D. Robbins
CA State Bar No. 209951
MORGAN STANLEY DW INC.
Law Division
101 California Street, 2nd Floor
San Francisco, CA 94111
Telephone: (415) 693-6215
Facsimile: (415) 693-6250

Attorneys for Respondent
MORGAN STANLEY DW INC.
and TODD SCHMUCKER

BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between MARLENE WILKINS Claimant, vs. MORGAN STANLEY DEAN WITTER, INC. and TODD SCHMUCKER Respondents.	NASD Case No. 04-00477

(Records Only-No Appearance Necessary)

To:
Custodian of Records
Charles Schwab & Co.
101 Montgomery Street
San Francisco, CA 94104

Pursuant to the provisions of section 10322 of the NASD Code of Arbitration, you are hereby directed to appear and to produce a copy of all documents referenced in Exhibit A attached hereto, with reference to Marlene and/or C. Grant Wilkins (Social Security Nos.), known addresses:

Personal appearance shall be waived if copies of the documents called for by this

subpoena are delivered to: **Jonathan D. Robbins, Esq., Morgan Stanley Law Department, 101 California Street, 2nd Floor, San Francisco, California, 94111**, within 30 days of receipt of this subpoena. A reasonable charge for copying will be paid. Opposing counsel has requested that you simultaneously send a copy of all responsive documents to him. Those documents should be sent to: Alan Friedberg, Esq., Pendleton Friedberg Wilson & Hennessey P.C., 303 East Seventeenth Avenue, Suite 1000, Denver, CO 80203-1263. Costs for copies sent to opposing counsel are not to be billed to Morgan Stanley.

Respectfully submitted,
Morgan Stanley Law Division

Dated: June 3, 2004

By: _____
Jonathan D. Robbins
Attorney for Respondents
Morgan Stanley DW Inc. and
Todd Schmucker

Jonathan D. Robbins
CA State Bar No. 209951
MORGAN STANLEY DW INC.
Law Division
101 California Street, 2nd Floor
San Francisco, CA 94111
Telephone: (415) 693-6215
Facsimile: (415) 693-6250

Attorneys for Respondent
MORGAN STANLEY DW INC.
and TODD SCHMUCKER

BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between MARLENE WILKINS Claimant, vs. MORGAN STANLEY DEAN WITTER, INC. and TODD SCHMUCKER Respondents.	NASD Case No. 04-00477

(Records Only-No Appearance Necessary)

To:
Custodian of Records
Michelle Kerr
Merrill Lynch
1800 Merrill Lynch Drive
2nd Floor
Hopewell, NJ 08534

Pursuant to the provisions of section 10322 of the NASD Code of Arbitration, you are hereby directed to appear and to produce a copy of all documents referenced in Exhibit A attached hereto, with reference to Marlene and/or C. Grant Wilkins (Social Security Nos.), known addresses:

Personal appearance shall be waived if copies of the documents called for by this subpoena are delivered to: **Jonathan D. Robbins, Esq., Morgan Stanley Law Department, 101 California Street, 2nd Floor, San Francisco, California, 94111**, within 30 days of receipt of this subpoena. A reasonable charge for copying will be paid. Opposing counsel has requested that you simultaneously send a copy of all responsive documents to him. Those documents should be sent to: Alan Friedberg, Esq., Pendleton Friedberg Wilson & Hennessey P.C., 303 East Seventeenth Avenue, Suite 1000, Denver, CO 80203-1263. Costs for copies sent to opposing counsel are not to be billed to Morgan Stanley.

Respectfully submitted,
Morgan Stanley Law Division

By: _____
Jonathan D. Robbins
Attorney for Respondents
Morgan Stanley DW Inc. and
Todd Schmucker

Dated: June 3, 2004

Jonathan D. Robbins
CA State Bar No. 209951
MORGAN STANLEY DW INC.
Law Division
101 California Street, 2nd Floor
San Francisco, CA 94111
Telephone: (415) 693-6215
Facsimile: (415) 693-6250

Attorneys for Respondent
MORGAN STANLEY DW INC.
and TODD SCHMUCKER

BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between MARLENE WILKINS Claimant, vs. MORGAN STANLEY DEAN WITTER, INC. and TODD SCHMUCKER Respondents.	NASD Case No. 04-00477

(Records Only-No Appearance Necessary)

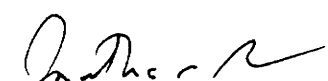
To:
Custodian of Records
Wells Fargo Investments
Legal Process Department
1220 Concord Avenue, A0303-064
Concord, CA 94520

Pursuant to the provisions of section 10322 of the NASD Code of Arbitration, you are hereby directed to appear and to produce a copy of all documents referenced in Exhibit A attached hereto, with reference to Marlene and/or C. Grant Wilkins (Social Security Nos.), known addresses:

Personal appearance shall be waived if copies of the documents called for by this subpoena are delivered to: **Jonathan D. Robbins, Esq., Morgan Stanley Law Department, 101 California Street, 2nd Floor, San Francisco, California, 94111**, within 30 days of receipt of this subpoena. A reasonable charge for copying will be paid. Opposing counsel has requested that you simultaneously send a copy of all responsive documents to him. Those documents should be sent to: Alan Friedberg, Esq., Pendleton Friedberg Wilson & Hennessey P.C., 303 East Seventeenth Avenue, Suite 1000, Denver, CO 80203-1263. Costs for copies sent to opposing counsel are not to be billed to Morgan Stanley.

Respectfully submitted,
Morgan Stanley Law Division

Dated: June 3, 2004

By: 
Jonathan D. Robbins
Attorney for Respondents
Morgan Stanley DW Inc. and
Todd Schmucker

BRANDON K. HEMLEY (Cal. Bar No. 162022)
Charles Schwab & Co., Inc.
Office of Corporate Counsel
101 Montgomery Street
San Francisco, CA 94104
Tel. (415) 636-3547
Fax (415) 636-5304

Attorney for Respondent
CHARLES SCHWAB & CO., INC.

IN THE MATTER OF THE ARBITRATION BEFORE THE

NATIONAL ASSOCIATION OF SECURITIES DEALERS

DISPUTE RESOLUTION, INC.

DAVID D. BARRETT, Claimant, vs. INVESTMENT MANAGEMENT CONSULTANTS, RICHARD L. BEHR, CHARLES SCHWAB & CO., INC., Respondent.	Case No.: 04-07074 SUBPOENA DUCES TECUM

TO: Custodian of Records
RBC DAIN RAUSCHER
Attn: Legal Processing
Dain Rauscher Plaza
60 South Sixth St.
Minneapolis, MN 55402-4422

Pursuant to the provisions of NASD Code of Arbitration Procedure Rule 10322, you are hereby directed to appear and to produce a copy of all documents referenced in Exhibit "A", a copy of which is attached hereto, with reference to **DAVID D. BARRETT.** The documents herein described must be produced by July 20, 2005, to:

Charles Schwab & Co., Inc.
Attn: Brandon K. Hemley
Office of Corporate Counsel
101 Montgomery Street
San Francisco, CA 94104

Production of the documents obviates the need for appearance.

Dated: 6/20, 2005

Respectfully submitted,

BRANDON K. HEMLEY
Attorney for Respondent
Charles Schwab & Co., Inc.

BRANDON K. HEMLEY (Cal. Bar No. 162022)
Charles Schwab & Co., Inc.
Office of Corporate Counsel
101 Montgomery Street
San Francisco, CA 94104
Tel. (415) 636-3547
Fax (415) 636-5304

Attorney for Respondent
CHARLES SCHWAB & CO., INC.

IN THE MATTER OF THE ARBITRATION BEFORE THE

NATIONAL ASSOCIATION OF SECURITIES DEALERS

DISPUTE RESOLUTION, INC.

DAVID D. BARRETT, Claimant, vs. INVESTMENT MANAGEMENT CONSULTANTS, RICHARD L. BEHR, CHARLES SCHWAB & CO., INC., Respondent.	Case No.: 04-07074 SUBPOENA DUCES TECUM

TO: Custodian of Records
INVESCO FUNDS GROUP, INC.
Attn: Legal Processing
P.O. BOX 173706
Denver, CO 80217-3706

Pursuant to the provisions of NASD Code of Arbitration Procedure Rule 10322, you are hereby directed to appear and to produce a copy of all documents referenced in Exhibit "A", a copy of which is attached hereto, with reference to **DAVID D. BARRETT.** The documents herein described must be produced by July 20, 2005, to:

Charles Schwab & Co., Inc.
Attn: Brandon K. Hemley
Office of Corporate Counsel
101 Montgomery Street
San Francisco, CA 94104

Production of the documents obviates the need for appearance.

Dated: 6/20, 2005

Respectfully submitted,

BRANDON K. HEMLEY
Attorney for Respondent
Charles Schwab & Co., Inc.

NASD DISPUTE REGULATION, INC.

CASE NO. 04-08777

VINCENT A. GALLUCCIO
Claimant,

v.

CITIGROUP GLOBAL MARKETS, LLC,
F/K/A SALOMON SMITH BARNEY
Respondent.

_____/

RECEIVED
JUL 1 1 2005
BY:_____

TO: **HSBC BROKERAGE (USA), INC.**
Attention: Records Custodian
452 Fifth Avenue
New York, N Y 10018
(800) 662-3343

GREETINGS:

WE COMMAND YOU, pursuant to Section 10322(a) of the NASD Code of Arbitration Procedure and Rule 1.410(a) of the Florida Rules of Civil Procedure, to produce the following documents in your care, custody, or control, to Richard L. Martens, Esquire, at Boose Casey Ciklin Lubitz Martens McBane & O'Connell, 515 North Flagler Drive, 19th Floor, West Palm Beach, Florida 33401, for receipt on or before **July 22, 2005**

DUCES TECUM: ANY AND ALL RECORDS IN YOUR POSSESSION RELATING TO:

Vincent Galluccio **Social Security No.:** redacted

INCLUDING BUT NOT LIMITED TO:

1. NEW ACCOUNT FORMS, CUSTOMER AGREEMENTS, SUBSCRIPTION AGREEMENTS, MONTHLY ACCOUNT STATEMENTS, HOLDING PAGES, POWERS OF ATTORNEY, TRADE CONFIRMATIONS, CANCELLED CHECKS, PROSPECUTSES AND CORRESPONDENCE FOR ANY AND ALL PRESENT OR PREVIOUSLY MAINTAINED INDIVIDUAL, IRA, JOINT, TRUST OR BUSINESS ACCOUNTS.

2. DOCUMENTS AND INFORMATION REGARDING ANY MANAGED ACCOUNTS, INCLUDING THE NAME OF ANY SUCH MANAGERS, ALL MANAGED ACCOUNT APPLICATIONS, AGREEMENTS, INVESTMENT RECOMMENDATIONS AND ANALYSES, AND CORRESPONDENCE.

3. ANY AND ALL DOCUMENTS AND INFORMATION REGARDING ANY

COMPUTER ACCESS PROGRAMS, ONLINE TRADING ACCOUNTS OR SUBSCRIPTIONS, OR ANY OTHER TYPE OF ELECTRONIC MONITORING FOR ANY ACCOUNT.

4. TELEPHONE RECORDINGS OF INCOMING OR OUTGOING PHONE CALLS WHICH ARE MAINTAINED BY YOU.

5. ALL PERSONNEL AND EMPLOYMENT RECORDS, INCLUDING APPLICATIONS, FORM U-4S (AND AMENDMENTS), FORM U-5S, INTERNAL REPRIMANDS, CUSTOMER COMPLAINTS, LETTERS OF CAUTION, PROMISSORY NOTES, EMPLOYMENT AGREEMENTS, LETTERS OF RESIGNATION, TERMINATION NOTICES, OR SIMILAR DOCUMENTS OR CATEGORIZE OF DOCUMENTS.

DATED: July 8, 2005

Signed: _____

RICHARD L. MARTENS
Florida Bar No.: 219908
MATTHEW N. THIBAUT
Florida Bar No.: 00514918

Requested by:
Richard L. Martens, Esquire
Matthew N. Thibaut, Esquire
Boose Casey Ciklin Lubitz
Martens McBane & O'Connell
Northbridge Tower I, 19th Floor
515 North Flagler Drive
West Palm Beach, Florida 33401
Telephone: (561) 832-5900
Facsimile: (561) 833-4209
Attorneys for Respondent Salomon Smith Barney

with copies federal expressed to:
Lisa Lasher
NASD Dispute Resolution, Inc.
Boca Center Tower 1 – Suite 200
5200 Town Center Circle
Boca Raton, FL 33486
Telephone: (561) 447-4902
Facsimile: (561) 416-9523 or (561) 416-2267

Ronald H. Thrash, Esquire
SHEPHERD, SMITH & EDWARDS
1314 Texas Avenue
Twenty-First Floor
Houston, Texas 77002
Telephone: (713) 227-2400
Facsimile: (713) 227-7215

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN	:	
	:	
JULIANNE YENCA	:	
	:	**NASD CASE No.**
	:	03-04740
CLAIMANT.	:	
	:	
-AGAINST-	:	
	:	**SUBPOENA DUCES**
UBS FINANCIAL SERVICES,	:	**TECUM**
f/k/a UBS PAINE WEBBER INC.,	:	
	:	
RESPONDENT.	:	

Via DHL Express

TO: American Skandia
Attn: Legal Department
1 Corporate Drive
Shelton, CT 06484

Pursuant to the provisions of Rule 10322(a) of the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc., you are hereby commanded to produce copies of the following documents, all with reference to accounts held, individually or jointly, at American Skandia ("American Skandia") or its predecessors or successors by or on behalf of Julianne Yenca, SS# Redacted from October 2003 to present, as well as any accounts for her benefit or over which she has trading authority, including, but not limited to policy numbers ACII-000488561 and ACII-000488572.

1. all monthly, quarterly and annual statements.

The documents described herein must be produced by 7/1/05 to:

David Goldberg, Esq.
UBS Financial Services
51 West 52nd Street, 16th Floor
New York, NY 10019

If you have any questions, please contact me directly at (212) 882-5705.

Dated: 6/22/05

David Goldberg, Esq.
UBS Financial Services
51 West 52nd Street, 16th Fl
New York, NY 10019
(212) 882-5705
Attorney for Respondent