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ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11692

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

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE  
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In the Matter of	:	
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RAYMOND JAMES FINANCIAL SERVICES, INC.,	:	ORDER ON MOTION TO QUASH SUBPOENA
J. STEPHEN PUTNAM, and	:	
DAVID LEE ULLOM	:	

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The Securities and Exchange Commission ("Commission") issued an Order Instituting Proceedings ("OIP") on September 30, 2004. A public hearing is scheduled to begin on January 31, 2005.

On November 30, 2004, I issued a subpoena to Raymond James Financial Services, Inc. ("Raymond James"), returnable on December 28, 2004, requested by the Division of Enforcement ("Division") for the following materials, not already produced in connection the Commission's investigation of Matter of Brite Business Corporation (B-1792):

1. All documents concerning Brite Business Corp., Brite Business S.A., Martin D. Fife, Charles W. Sullivan, Mary Lee Capalbo (a/k/a Mary Lee Herula), Farouk A. Khan, Seaview Development and Holdings, Ltd., Michael A. Clarke, Robert M. Wachtel, Johan C. Hertzog, Dorian Brisbois, Ian Doidge, Legacy 2000, and Foxhill Management, Inc.
2. The personnel files for Dennis Herula, David Lee Ullom, J. Stephen Putnam, Kevin Carreno, and Michael DiGirolamo.
3. All documents concerning Dennis Herula, including, but not limited to, all documents concerning his supervision and the reasons for his termination.
4. All documents concerning David Lee Ullom, including, but not limited to, all documents concerning his supervision and the reasons for his termination.
5. All documents concerning actual or threatened lawsuits arising from the conduct alleged in the [OIP] in this matter, including, but not limited to, all pleadings, agreements, and transcripts of depositions concerning Rheaume Holdings, Ltd. v. Raymond James Financial Services, Inc., Civil Action No. 02-400-ML (D.R.I.)
6. All documents reflecting statements, including, but not limited to, deposition and investigative testimony in any proceeding, concerning Raymond James,

roles and responsibilities at Raymond James, and/or Raymond James's supervisory and/or compliance policies and procedures, from Dennis Herula, David Lee Ullom, Stephen J. Putnam, Kevin Carreno, Michael DiGirolamo, and Barry S. Augenbraum.

7. All documents concerning Robert Fitzhenry, Robert Curl, Rheaume Holdings Ltd., Rashed Mohamed Mahran Al Bloushi, Mohamed Hamad, Malcolm Monlezun, William Britt, Beehive International LLC, Mark Cohn, Lewis Blackburn, Four Star Financial Services, LLC, Robert Burr, and Trigon Capital, including, but not limited to, all documents reflecting agreements with these individuals, payments made to these individuals, and/or correspondence with these individuals and/or their counsel or other agents.
8. All documents concerning Raymond James's efforts and ability to retain e-mail communications to or from its branch offices and its registered representatives during the period from January 1, 1999, through the present.
9. All documents concerning Raymond James's efforts and ability to retain e-mail communications to or from its homes (sic) offices in St. Petersburg, Florida during the period from January 1, 1999, through the present.
10. All documents created during the period from January 1, 1999, through the present, relating to Raymond James's efforts or ability to comply with Rule 17a-4 of the Securities Exchange Act of 1934.

(Raymond James Subpoena, Attachment A.)

On December 15, 2004, pursuant to Rule 232(e) of the Commission's Rules of Practice, Raymond James submitted by facsimile a Motion to Quash with Exhibits A and B attached,<sup>1</sup> and a Memorandum in Support of the Motion ("Motion to Quash"). Raymond James filed a hard copy of the Motion to Quash on December 16, 2004. Raymond James contends that the subpoena is overly broad, excessive in scope, and unduly burdensome because, among other things, it seeks: (1) documents prior to January 1, 1999, and after December 31, 2000; (2) information unrelated to the allegations in the OIP; (3) information about the supervision of Raymond James representatives other than those in the Cranston office involved with Dennis Herula's activities with Brite Business Corporation, and (4) a myriad of documents other than e-mails. See Motion to Quash at 2-3; Exhibit A. Raymond James notes that it has complied with prior Commission subpoenas and has produced extensive materials not limited to: (1) its compliance, supervisory, operations, and registered representatives manuals, and supervisory policies and procedures relating to the supervision of registered representatives; (2) employment of Dennis Herula and David Lee Ullom; (3) communications with Martin Fife, Mary Lee Capalbo, Foxhill Management, Inc., Brite Business Corporation, or any client, customer, or investor of Brite Business Corporation; (4) personnel, disciplinary, and registered representative files of Jason Ullom, J. Stephen Putnam, and Michael

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<sup>1</sup> Exhibit B consists of eleven subpoenas to Raymond James, including two from the United States District Court in Rhode Island to testify before the Grand Jury. Exhibit B also contains two subpoenas to David Ullom, and one subpoena to Jason Ullom. All the subpoenas cover the period from January 1, 1999, to a date in 2001 or 2002.

DiGirolamo and much more for the period from January 1, 1999, to the response date, in 2002. See Motion to Quash at 3; Exhibit B.

On December 22, 2004, the Division filed an Opposition to the Motion to Quash. The Division contends that: (1) the documents it seeks for the time period specified in the subpoenas will produce materials that are relevant to this proceeding; (2) Raymond James has misconstrued the scope of some of the subpoena requests; and (3) Raymond James does not object to three of the ten requests, provided that the last request covers only e-mails.

### **Ruling**

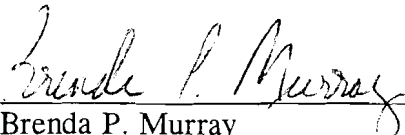
The Commission's standard for subpoenas is that they not be unreasonable, oppressive, excessive in scope, or unduly burdensome. 17 C.F.R. § 201.232(b). With a hearing set to begin in less than forty days, I find it to be unreasonable, oppressive, and unduly burdensome to impose on Raymond James the effort to locate and produce the extensive documentation that the Division seeks via subpoena.

Almost every one of the more than thirty persons or entities named in the Division's subpoena are person and entities who appear to have been involved in the matters that are the subject of the OIP. Commission Rule of Practice 230(g) states that:

The Division of Enforcement shall promptly inform the hearing officer and each party if investigatory subpoenas are issued under the same investigation file number or pursuant to the same order directing private investigation ("formal order") under which the investigation leading to the institution of proceedings was conducted. The hearing officer shall order such steps as necessary and appropriate to assure that the issuance of investigatory subpoenas after the institution of proceedings is not for the purpose of obtaining evidence relevant to the proceedings and that any relevant documents that may be obtained through the use of investigatory subpoenas in a continuing investigation are made available to each respondent for the inspection and copying on a timely basis.

17 C.F.R. § 201.230(g). Rule 230(g) is not a model of clarity but one reasonable interpretation is that it prohibits the Division from using investigatory subpoenas, which it can issue on its own, to gather additional evidence to support the allegations in the OIP, after the Commission has initiated a proceeding. If this interpretation is correct, then the Division is seeking here to violate the spirit of the rule by using a subpoena duces tecum to gather evidence relevant to this proceeding where an investigatory subpoena is not available.

For these reasons, I ORDER that the Motion to Quash the subpoena issued to Raymond James on November 30, 2004, be GRANTED.

  
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Brenda P. Murray  
Chief Administrative Law Judge