

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

JOHN M. PLANK

v.

CHEASPEAKE INVESTMENT SERVICES, INC.,
VISION LIMITED PARTNERSHIP, RICHARD
TEAL BARNEY, and YU DEE CHANG

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2004 DEC 20 P 3:35
OFFICE OF PROCEEDINGS
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CFTC Docket No. 02-066
ORDER PURSUANT TO
DELEGATED AUTHORITY

In an order dated January 29, 2003, the Administrative Law Judge (“ALJ”) certified to the Commission the question of whether a National Futures Association (“NFA”) arbitration decision dated March 8, 2002 bars the Commission’s consideration of the above reparation claim. The Commission, in an order dated July 22, 2004, determined that its own review of that question would be premature because the ALJ needed to review the record in the NFA arbitration proceeding to determine whether the legal doctrines of *res judicata* or *collateral estoppel* applied.

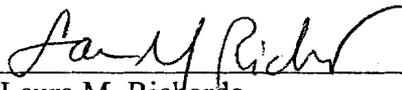
In an order dated October 6, 2004, the ALJ ruled that the NFA proceeding did not bar consideration of the reparation claim on grounds of *collateral estoppel* or *res judicata*. On October 19, 2004, respondents filed an “Omnibus Motion” that, as relevant here, requested the ALJ to certify his ruling for interlocutory review and to stay the proceedings pending review. On October 20, 2004, the ALJ denied these aspects of the motion.

On October 28, 2004, respondents requested that the Commission take interlocutory review of the ALJ’s orders of October 6 and October 20, 2004 and stay the proceedings pending review. The ALJ’s rulings regarding *collateral estoppel* and *res judicata* satisfy the conditions

of Commission Rule 12.309(a)(3);¹ accordingly, review is available and appropriate under Rule 12.309(a)(4) (providing for interlocutory appeal in the absence of certification by an ALJ). Respondents' requests for interlocutory review on other grounds are denied.

Because the ALJ has denied respondents' request for a stay, their current request to the Commission for a stay order is properly before the Commission as required by Commission Rule 12.309(d). The request for a stay of proceedings is granted. This stay shall remain in effect for a period of 120 days from the date of this order so that the Commission may determine whether, in light of the NFA arbitration decision, the reparation claim is barred on the grounds of *collateral estoppel* or *res judicata*.

IT IS SO ORDERED.²



Laura M. Richards
Senior Assistant General Counsel
Commodity Futures Trading Commission

Dated: December 20, 2004

¹ Interlocutory review is available at the Commission's discretion when "(i) a ruling sought to be appealed involves a controlling question of law or policy; (ii) an immediate appeal may materially advance the ultimate issues of the proceedings; and (iii) subsequent reversal of the ruling would cause unnecessary delay or expense to the parties." 17 C.F.R. § 12.309(a)(3).

² By the Commission pursuant to delegated authority: 17 C.F.R. § 12.408(a)(6). Within seven days after service of this order, a party may file with the Commission a petition for reconsideration of the ruling. *Id.* at § 12.408(c).