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BEFORE THE ARIZONA CORPORATION COMMISSION

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JIM IRVIN
Commissioner-Chairman
RENZ D. JENNINGS
Commissioner
CARL J. KUNASEK
Commissioner

In the matter of

FOREX INVESTMENT SERVICES CORPORATION
2700 N. Central Ave., Suite 1110
Phoenix, AZ 85004

EASTERN VANGUARD FOREX LTD.
2700 N. Central Ave., Suite 1110
Phoenix, AZ 85004

C/o HWR Services Limited, Registered Agent
P. O. Box 71, Craigmuir Chambers
Road Town, Tortola
British Virgin Islands

EASTERN VANGUARD GROUP LIMITED
C/o AMS Trustees Limited, Registered Agent
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Road Town, Tortola
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SAMMY LEE CHUN WING
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PETER SUEN SUK TAK
Eastern Vanguard Group Limited
Creque Building, Main Street, P. O. Box 116
Road Town, Tortola
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DOCKET NO. S-03177A-98-0000

MOTION TO QUASH RESPONDENTS' ADMINISTRATIVE SUBPOENAS DUCES TECUM, FOR INTERIM RELIEF FROM SUBPOENA COMPLIANCE AND FOR AN ORDER PROTECTING PROSPECTIVE SECURITIES DIVISION NONPARTY AND NONEXPERT WITNESSES FROM PREHEARING COMPELLED DISCOVERY BY RESPONDENTS

Expedited Oral Argument Requested

Arizona Corporation Commission

DOCKETED

JUL 06 1998

DOCKETED BY *Jmh*

- 1 JAMES CHARLES SIMMONS, JR.)
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- 3 Glendale, AZ 85301)
- 4 MICHAEL E. CHO)
- 5 839 Faxon Avenue)
- 6 San Francisco, CA 94112)
- 7 TO FAI CHENG)
- 8 1800 Van Ness, 2nd Fl.)
- 9 San Francisco, CA 94109)
- 10 JEAN YUEN)
- 11 439 3rd Avenue)
- 12 San Francisco, CA 94118)
- 13 Y & T INC. dba TOKYO)
- 14 INTERNATIONAL INVESTMENT LTD.)
- 15 1800 Van Ness Ave., 2nd Fl.)
- 16 San Francisco, CA 94109)
- 17 WING MING TAM)
- 18 c/o Tokyo International Investment Ltd.)
- 19 1800 Van Ness Ave., 2nd Fl.)
- 20 San Francisco, CA 94109)
- 21 GUO QUAN ZHANG)
- 22 c/o Tokyo International Investment Ltd.)
- 23 1800 Van Ness Ave., 2nd Fl.)
- 24 San Francisco, CA 94109)
- 25 **Respondents.**)
- 26

18 Pursuant to A. A. C. R14-3-109(0), the Securities Division ("Division") of the Arizona
 19 Corporation Commission ("Commission") hereby moves to quash five administrative subpoenas
 20 duces tecum issued by the Commission's Executive Secretary on or about July 1, 1998 on the
 21 application of the Respondents in the above-captioned matter. These five subpoenas respectively
 22 command nonparties Dean Davis, Alan Davis, Van Shumway, Willis Scott and Michael Noriega,
 23 Jr. (the "witnesses") to each produce numerous records at the Phoenix, Arizona offices of
 24 Respondents' local counsel at 9:00 a.m. on Tuesday, July 7, 1998. Pending disposition of its
 25 motion to quash, the Division further moves for an interim order to suspend compliance with these
 26 subpoenas by the witnesses. Furthermore, the Division moves for an order protecting all nonparty

1 or nonexpert prospective witnesses for the Securities Division at the hearing scheduled in this
2 matter from any prehearing compelled discovery by Respondents.

3 Pursuant to A. A. C. R14-3-109(Q), the grounds for this motion are as follows:

4 **I.**

5 **THE SUBPOENAS SHOULD BE QUASHED BECAUSE THEIR ISSUANCE WAS AN**
6 **ULTRA VIRES ACT**

7 In their application to the Commission's Executive Secretary for the above subpoenas,
8 Respondents requested issuance pursuant to A. A. C. R14-3-109(0) and stated that these subpoenas
9 "simply seek the production of various documents that are relevant to the witnesses' potential
10 testimony." Each subpoena on its face commands only the production of documents at the offices
11 of Respondents' local counsel six days before the commencement of the hearing in this matter.

12 The subpoenas issued at the request of Respondents are improper and unenforceable
13 because the cited Commission rule of practice and procedure provides solely for the compelled
14 production of "books, papers, documents or tangible things" at the designated place of hearing. A.
15 A. C. R14-3-109(0). This rule grants no power to issue subpoenas compelling production of
16 records at other than the hearing itself. The issuance of subpoenas purporting to compel only
17 *prehearing* production at a place *other than* the hearing venue was not within the ministerial power
18 of the Commission's Executive Secretary under the cited rule relied upon by Respondents,
19 therefore these subpoenas must be quashed as the stillborn progeny of an *ultra vires* act of the
20 Executive Secretary.

21 **II.**

22 **THE SUBPOENAS SHOULD BE QUASHED FOR BEING UNREASONABLE AND**
23 **OPPRESSIVE**

24 Pursuant to A. A. C. R14-3-109(0), the "presiding officer" may, *inter alia*, quash a
25 subpoena if it is unreasonable or oppressive. Respondents' subpoenas fall squarely into each
26 category and should therefore be quashed.

It is clearly unreasonable to compel the five individuals targeted by Respondents'

1 subpoenas to carry the cross of Respondents' defense in this matter. These individuals are neither
2 parties to this proceeding nor prospective expert witnesses for the Division. The Division
3 anticipates compelling testimony from these individuals by administrative subpoena for
4 evidentiary purposes at the hearing scheduled in this matter, at which time Respondents also will
5 be entitled to cross examine them for evidentiary purposes. The compensation allowed these
6 individuals for their compelled attendance will be the munificent witness fee of \$12 per day plus
7 travel milage. It is unreasonable for Respondents to additionally compel these nonparty individuals
8 prior to the hearing to bear the double burden of assembling and delivering to Respondents'
9 counsel the multitude of private records demanded by these subpoenas. Moreover, Respondents
10 will receive prior to the hearing a set of copies of the Division's proposed exhibits, which would
11 include any documents connected with the individuals that the Division may seek to offer into
12 evidence. It is unreasonable to compel these individuals also to bear the burden of a separate
13 production of any of the same documents to Respondents. Finally, Respondents also have served
14 upon the Division a comprehensive request for production of documents that apparently
15 encompasses the entire Division case file. This pending request renders even more unreasonable
16 the compelled production from the individuals of those records that may be available to the
17 Division and responsive to Respondents' request.

18 The unreasonable nature of Respondents' subpoenas underscores their monstrously
19 oppressive effect upon the targeted individuals. These subpoenas demand not merely the records of
20 all past transactions and communications with Respondents, but a crushing accumulation of
21 records documenting every corner of the financial and legal affairs of these individuals *since the*
22 *beginning of 1992!* Since Respondents declined to qualify these individuals by requiring such
23 financial background information at the time of investment, Respondents should now be estopped
24 from compelling its production. Such compulsion has the effect of punishing these individuals, and
25 can only serve to harass, intimidate and terrorize all prospective witnesses from cooperating with
26 the Division. Moreover, it is clearly oppressive and unnecessary for Respondents to compel the

1 production of transactional records they themselves generated and copied to the individuals.

2 **III.**
3 **INTERIM RELIEF REQUIRED FROM COMPELLED PRODUCTION**

4 Insofar as the disposition of the above motion to quash may remain pending, the Division
5 also moves for an interim order relieving the subpoenaed individuals from complying with
6 Respondents' subpoenas until final disposition. Should such an interim order be issued, the
7 Division requests that such order also require Respondents to immediately notify any individuals
8 actually served with their subpoena of the interim relief from compliance.

9 **IV.**
10 **A GENERAL PROTECTIVE ORDER SHOULD BE ISSUED**

11 For the reasons discussed above in support of its motion to quash Respondents' subpoenas,
12 the Division also moves for a order protecting all its nonparty or nonexpert prospective hearing
13 witnesses from any compelled prehearing discovery by Respondents. Administrative case
14 economy requires that the issues raised in this motion be settled for the proceeding as a whole in
15 order to preclude further prehearing dispute. Moreover, the Division is entitled to prehearing
16 finality on these issues to allow it to focus on preparation for the scheduled hearing.

17 **V.**
18 **CONCLUSION**

19 For the reasons referred to above, the Division now moves to quash Respondents'
20 subpoenas, for interim relief from compliance with Respondents' subpoenas pending disposition of
21 the motion to quash, and for a protective order against compelled prehearing discovery by
22 Respondents' from nonparty or nonexpert prospective hearing witnesses for the Division. The

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1 Division also requests that any order to quash or for interim relief require immediate notification
2 by Respondents to any individuals actually served with their subpoenas.

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RESPECTFULLY SUBMITTED this 6th day of July, 1998.

GRANT WOODS
Attorney General
Consumer protection & Antitrust Section

BY: 

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1 ORIGINAL AND TEN (10) COPIES of the foregoing
2 filed this 6th day of July, 1998, with:

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